

No. 15683 ✓

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United States  
Court of Appeals  
for the Ninth Circuit

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W. S. PEKOVICH and ADMIRALTY ALASKA  
GOLD MINING COMPANY, a Corporation,  
Appellants,

vs.

MINNIE COUGHLIN, as Executrix of the Estate  
of ROBERT E. COUGHLIN, Deceased,  
Appellee.

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Transcript of Record

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Appeal from the District Court for the  
Territory of Alaska,  
Division Number One.

FILED

NOV 19 1957



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## COUNSEL OF RECORD

For Appellant:

JOSEPH A. McLEAN,  
P.O. Box 1193, Juneau, Alaska.

For Appellee:

FAULKNER, BANFIELD & BOOCHEVER,  
MR. BOOCHEVER,  
P.O. Box 1121, Juneau, Alaska.



In the District Court for the District of Alaska,  
Division Number One at Juneau

Civil Action No. 7605—A

MINNIE COUGHLIN as Executrix of the Estate  
of ROBERT E. COUGHLIN, Deceased,

Plaintiff,

vs.

W. S. PEKOVICH and ADMIRALTY ALASKA  
GOLD MINING CO., a Corporation,

Defendants.

### COMPLAINT

1. Plaintiff is the executrix of the estate of Robert E. Coughlin, deceased, and has been authorized to file this suit by the U. S. Commissioner and Ex-Officio Probate Court at Juneau, Alaska, as executrix of said estate.

2. The defendant W. S. Pekovich is a resident of the Territory of Alaska and the defendant Admiralty Alaska Gold Mining Co. is a corporation organized under the laws of the Territory of Alaska.

3. On February 5, 1954, the said W. S. Pekovich, individually and as president of Admiralty Alaska Gold Mining Co., entered into an agreement with Robert E. Coughlin, deceased, a true and correct copy of which agreement is attached hereto as Exhibit "A," whereby four thousand shares of the Admiralty Alaska Gold Mining Co. stock was to be

issued to the said Robert E. Coughlin in the event that the said Robert E. Coughlin took care of the bookkeeping and other necessary things in connection with the Defense Mineral Exploration Administration Admiralty Alaska matter.

4. The said Robert E. Coughlin performed services as set forth in the agreement referred to above, but the said W. S. Pekovich and the said Admiralty Alaska Gold Mining Company, a corporation, have failed and refused to deliver the four thousand shares of stock as agreed.

Wherefore, plaintiff demands judgment against defendants ordering said defendants to deliver to the plaintiff four thousand shares of the stock of Admiralty Alaska Gold Mining Co., or in lieu thereof, the fair market value of said stock together with plaintiff's costs and disbursements herein.

Dated at Juneau, Alaska, this 11th day of Feb., 1957.

/s/ MINNIE COUGHLIN,  
Executrix of the Estate of Robert E. Coughlin, Deceased.

United States of America,  
Territory of Alaska—ss.

I, Minnie Coughlin, being first duly sworn according to law, depose and say:

That I am the executrix of the estate of Robert E. Coughlin, deceased; that I have read the fore-

going complaint, know the contents thereof, and that the facts stated therein are true and correct as I verily believe.

/s/ MINNIE COUGHLIN.

Subscribed and Sworn to before me this 11th day of Feb., 1957.

[Seal]      /s/ R. BOOCHEVER,  
Notary Public for Alaska.

My commission expires Dec. 10, 1957.

(Copy)

EXHIBIT A

Feb. 5, '54.

Admiralty Alaska Gold Mining Co.  
Juneau, Alaska

Mine Office:

Funter Bay, Alaska.

Main Office:

Box 529, Juneau, Alaska.

Mr. R. E. Coughlin,  
Juneau, Alaska.

Dear Bob:

This will confirm my understanding with you that if you take care of the bookkeeping and other necessary things in the connection with the D.M.E.A. Admiralty Alaska matter I will give you



in compensation therefor or cause to be given you 4,000 (four thousand) shares of the Admiralty Alaska Gold Mining Co. stock.

In Witness whereof, my hand.

/s/ W. S. PEKOVICH.

[Endorsed]: Filed February 11, 1957.

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[Title of District Court and Cause.]

### ANSWER AND AFFIRMATIVE DEFENSE

Come now W. S. Pekovich and Admiralty Alaska Gold Mining Company, an Alaska corporation hereinafter referred to as "Admiralty Alaska," and for answer and affirmative defense to the plaintiff's complaint admit, deny, and allege as follows:

#### Answer

1. Defendants have no knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph one of plaintiff's complaint.

2. Admit the allegations of paragraph 2.

3. Admit that shortly prior to February 5, 1954, an oral agreement was entered into between said W. S. Pekovich and said Robert E. Coughlin, in substance and effect as confirmed in a subsequent letter dated February 5, 1954, written by said W. S. Pekovich to said Robert E. Coughlin, a copy of



which letter is annexed to plaintiff's complaint and marked Exhibit A; deny that said W. S. Pekovich then was, or is now, president of Admiralty Alaska; allege that on or about May 28, 1954, subsequently to making said agreement of February 5, 1954, evidenced by plaintiff's said Exhibit A, the said Robert E. Coughlin elected to be paid in money instead of said Admiralty Alaska stock for his said services, and was so paid in full in money for all his said services, including payment in full in money for the months of February, March and April on May 28, 1954, and was not entitled to, and never claimed, said 4,000 shares of Admiralty Alaska stock, or any part thereof, for his said services or otherwise.

4. Admit that said Robert E. Coughlin performed services as alleged; admit the defendants have not delivered said 4,000 shares of Admiralty Alaska stock, or any part thereof, to said Robert E. Coughlin or to the plaintiff; and deny that the plaintiff is entitled to said 4,000 shares of Admiralty Alaska stock, or any part thereof.

### Affirmative Defense

For affirmative defense to the plaintiff's complaint the defendants allege as follows:

1. That Admiralty Alaska Gold Mining Company, hereinafter called "Admiralty Alaska," is an Alaska corporation, and has mining property and a mine office at Funter Bay, Alaska; and at all times since October, 1951, has had an office in the Shattuck Building at Juneau, Alaska, and one part-time

employee to take care of the Admiralty Alaska's bookkeeping and other necessary things in connection with its Defense Minerals Exploration Administration matters and affairs, all at the compensation pay rate of \$75.00 per month.

2. That W. S. Pekovich is a stockholder in said Admiralty Alaska; and during all the times herein mentioned held no office in Admiralty Alaska excepting the office of general manager.

3. That at the annual meeting of Admiralty Alaska stockholders on February 5, 1954, Admiralty Alaska's then acting part-time employee resigned; and on February 5, 1954, the said Robert E. Coughlin was employed to take over and perform all the same part-time duties theretofore performed by said resigning employee, at the same compensation rate of pay, to wit, \$75.00 per month.

4. That on February 5, 1954, when said Robert E. Coughlin accepted and assumed such employment Admiralty Alaska was entirely without funds to pay him for said services in money; and accordingly it was agreed between said W. S. Pekovich and said Robert E. Coughlin that said W. S. Pekovich would give, or cause to be given, to said Robert E. Coughlin 4,000 shares of Admiralty Alaska stock to compensate the said Robert E. Coughlin for his services from February 5, 1954, to and until the next annual meeting of stockholders on February 5, 1955.

5. That at the February 5, 1955, annual meeting of Admiralty Alaska stockholders said Robert E. Coughlin was authorized to continue in said employment at the rate of \$75.00 per month; and he did so continue in said employment to and until the time of his death on September 22, 1955, at the rate of \$75.00 compensation per month; and ever since September 22, 1955, one Dapceovich has performed the same services theretofore performed by said Robert E. Coughlin, and his said predecessor, at the same rate of pay, to wit, \$75.00 per month.

6. That on or about May 28, 1954, Admiralty Alaska acquired funds sufficient to pay said Robert E. Coughlin for his said services in money instead of Admiralty Alaska stock; and thereupon the said Robert E. Coughlin elected to receive money instead of said stock for his said services; and, after withholding social security deductions, was so paid in money for his said services as follows:

Check No.	Date	Purpose	Amount
474	5-28-54	Salary—Feb., Mar., April, 1954	\$ 225.00
547	9-28-54	Salary—May, June, July, 1954	220.50
564	11- 4-54	Salary—Aug., Sept., Oct., 1954	220.50
637	1- 7-55	Salary—Nov. & Dec., 1954	147.00
651	2- 3-55	Salary—January, 1955	73.50
663	2-16-55	Salary—February, 1955	73.50
671	2-24-55	Salary—March, 1955	73.50
706	4-11-55	Salary—April, 1955	73.50
739	4-28-55	Salary—May, 1955	73.50
792	6- 8-55	Salary—June, 1955	73.50
821	7-11-55	Salary—July, 1955	73.50
860	8- 9-55	Salary—August, 1955	73.12
882	9- 8-55	Salary—September, 1955	73.12
Total salary paid February 5, 1954,			
to September 30, 1955.....			<u>\$1,473.74</u>

7. That at no time between May 28, 1954, and the time of his death on September 22, 1955, did the said Robert E. Coughlin ever request, demand or claim 4,000 shares of Admiralty Alaska stock, or any part thereof, for said services referred to in plaintiff's said Exhibit A, or for any other services, for the reason that said agreement of February 5, 1954, had, as aforesaid, been superseded and nullified by his election to receive his compensation in money instead of said Admiralty Alaska stock.

Wherefore, defendants pray that plaintiff's complaint and action be dismissed and held for naught; and that defendants have and recover their costs and a reasonable attorney fee, and for any other or further relief merited.

/s/ JOSEPH A. McLEAN,  
Defendants Attorney.

Receipt of copy acknowledged.

[Endorsed]: Filed March 1, 1957.

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[Title of District Court and Cause.]

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came on to be heard before the court, without a jury, on April 2, 1957, plaintiff being present in person and represented by her attorney, R. Boochever, and the defendant Sam Pekovich



being present in person and as general manager of the defendant Admiralty Alaska Gold Mining Co. and the defendants having been represented by Joseph A. McLean, of their attorneys, and evidence having been adduced in open court and arguments heard and the court having delivered its oral opinion, the court makes the following:

### Findings of Fact

1. Plaintiff is the executrix of the estate of Robert E. Coughlin, deceased, and has been authorized to file this suit by the U. S. Commissioner and Ex-Officio Probate Court of Juneau, Alaska, as executrix of the said estate.

2. The defendant, W. S. Pekovich, is a resident of the Territory of Alaska and at all times relevant to this suit has been and is the general manager and principal stockholder of Admiralty Alaska Gold Mining Co., a corporation organized under the laws of the Territory of Alaska.

3. At a meeting of the board of directors on February 1, 1954, C. J. Ehrendreich, the secretary and treasurer and accountant for the Admiralty Alaska Gold Mining Co., resigned because he felt the salary of \$75.00 a month was inadequate. R. E. Coughlin was employed as secretary and treasurer and bookkeeper for the corporation to take the place of Mr. Ehrendreich.

4. Robert E. Coughlin was to receive \$75.00 a month as a salary and as an additional inducement

to have him perform the work, W. S. Pekovich entered into an agreement with Robert E. Coughlin, deceased, whereby Mr. Pekovich agreed that if Mr. Coughlin performed the bookkeeping and related services for the company in connection with a Defense Mineral Exploration Administration contract, that Mr. Pekovich would give or cause to be given to Mr. Coughlin four thousand shares of Admiralty Alaska Gold Mining Co. stock. The agreement referred to above was reduced to writing by Mr. Pekovich and was introduced into evidence as plaintiff's Exhibit 1 and is referred to by reference hereby.

5. It is admitted that Mr. Coughlin performed the services agreed upon.

6. Neither Mr. Coughlin nor his estate were ever issued the four thousand shares of stock referred to in the agreement.

7. Mr. Coughlin received a salary of \$75.00 a month during the period he was employed by Admiralty Alaska Gold Mining Co., being the period from February 1, 1954, to the date of his death in September, 1955.

8. There is insufficient evidence to prove that the defendant Admiralty Alaska Gold Mining Co., a corporation, authorized or ratified the agreement between Mr. Pekovich and Mr. Coughlin pertaining to the issuance of four thousand shares to Mr. Coughlin in consideration of his services.

From the foregoing facts, the court makes the following:

Conclusions of Law

1. Plaintiff has no plain and speedy remedy at law.

2. Plaintiff is entitled to a decree ordering the defendant W. S. Pekovich to transfer forthwith to the plaintiff four thousand shares of the common stock of Admiralty Alaska Gold Mining Co., a corporation, and awarding plaintiff its costs and disbursements herein, including a reasonable attorney's fee of \$340.00.

Done in Open Court this 3rd day of April, 1957.

/s/ RAYMOND J. KELLY,  
District Judge.

Receipt of copy acknowledged.

[Endorsed]: Filed April 4, 1957.

In the District Court for the District of Alaska,  
Division Number One at Juneau

Civil Action File No. 7605—A

MINNIE COUGHLIN as Executrix of the Estate  
of ROBERT E. COUGHLIN, Deceased,

Plaintiff,

vs.

W. S. PEKOVICH and ADMIRALTY ALASKA  
GOLD MINING CO., a Corporation,

Defendants.

### DECREE

This matter coming on to be heard before the court, without a jury, on April 2, 1957, the plaintiff being present in person and represented by her attorney, R. Boochever, and the defendant, W. S. Pekovich, being present in person and as general manager of the defendant Admiralty Alaska Gold Mining Co., a corporation, and defendants being represented by Joseph A. McLean of their attorneys, and evidence having been adduced in open court, and arguments heard, and the court having delivered its oral opinion, and findings of fact and conclusions of law having been entered,

It Is Hereby Ordered, Adjudged and Decreed:

That the defendant W. S. Pekovich transfer and deliver to the plaintiff forthwith four thousand shares of common stock of Admiralty Alaska Gold Mining Co., a corporation, and



It Is Further Ordered, Adjudged and Decreed:

That plaintiff have judgment against the defendant W. S. Pekovich for plaintiff's costs and disbursements herein, including an attorney's fee of \$450.00.

Done in Open Court this 3rd day of April, 1957.

/s/ RAYMOND J. KELLY,  
District Judge.

Receipt of copy acknowledged.

[Endorsed]: Filed April 4, 1957.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice Is Hereby Given: That the above-named defendants, W. S. Pekovich and Admiralty Alaska Gold Mining Company, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the final decree herein dated April 3, 1957, and the whole thereof, and from the entry thereof on April 4, 1957, in favor of the plaintiff and against the defendant W. S. Pekovich and ordering the defendant W. S. Pekovich to deliver to the plaintiff 4,000 shares of common stock of Admiralty Alaska Gold Mining Company; and awarding judgment against the defendant W. S. Pekovich for plaintiff's costs

and disbursements herein and for an attorney's fee of \$340.00.

Dated: Juneau, Alaska, April 26, 1957.

ADMIRALTY ALASKA GOLD MINING COM-  
PANY, A CORPORATION,

By /s/ W. S. PEKOVICH,  
Its General Manager;

/s/ W. S. PEKOVICH,

In Pro Per and for Admiralty Alaska Gold Mining  
Company.

Receipt of copy acknowledged.

[Endorsed]: Filed May 1, 1957.

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[Title of District Court and Cause.]

STIPULATION RE PRINTING  
TRANSCRIPT OF RECORD

It is stipulated by and between the respective parties herein: That in printing the record in this action for use in the United States Court of Appeals for the Ninth Circuit all captions should be omitted after the title of the action has been once printed, and the name of the paper or document should be substituted therefor. All other parts of the record should be printed.

Dated: Juneau, Alaska, May 1, 1957.

ADMIRALTY ALASKA GOLD MINING COM-  
PANY, A CORPORATION,

By /s/ W. S. PEKOVICH,  
Its General Manager;

/s/ W. S. PEKOVICH,  
Defendants-Appellants.

/s/ R. BOOCHEVER,  
Attorney for Plaintiff-  
Appellee.

[Endorsed]: Filed May 1, 1957.

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[Title of District Court and Cause.]

STATEMENT OF POINTS ON APPEAL

1. The court erred in overruling defendant-appellant's motion for non-suit based upon failure to prove a case, as shown on page 9 of transcript.

a. No showing was made as to value of contested corporate stock.

b. No conclusive showing that 4,000 shares of stock was an inducement.

c. No showing who was obligated for the 4,000 shares.

2. The court erred in admitting, over the objection of defendant, Plaintiff's Exhibit No. 3, defend-

ant's personal letter to Mr. Roden, an attorney, as shown on page 51 of the transcript.

3. The complaint and the evidence are insufficient to constitute a cause or support a judgment rendered by the court in these respects:

a. There was conclusive evidence that the corporation lacked funds to pay a \$75.00 salary to the plaintiff.

b. There is no competent evidence that either the corporation or its management knew that the plaintiff was drawing a \$75.00 monthly salary for himself.

c. There is no competent evidence to the effect that the alleged inducement offered by the general manager is not binding upon the corporation, as set forth in Finding No. 8.

4. The findings of fact and conclusions of law, together with the decree are not supported by the evidence.

Dated this 20th day of August, 1957.

/s/ JOSEPH A. McLEAN,  
Of Attorneys for Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed August 21, 1957.

In the U. S. District Court for the District of  
Alaska, Division Number One, at Juneau

No. 7605—A

MINNIE COUGHLIN as Executrix of the Estate  
of ROBERT E. COUGHLIN, Deceased,

Plaintiff,

vs.

W. S. PEKOVICH and ADMIRALTY ALASKA  
GOLD MINING CO., a Corporation,

Defendants.

REPORTER'S TRANSCRIPT  
OF RECORD

Be It Remembered, that on the 2nd day of April, 1957, court having convened at 10:00 o'clock a.m., at Juneau, Alaska, the above-entitled cause came on for trial without a jury; the Honorable Raymond J. Kelly, United States District Judge, presiding; the plaintiff appearing in person and by Robert Boochever, her attorney; W. S. Pekovich, defendant, appearing in person, and both defendants appearing by Joseph A. McLean, their attorney; respective counsel having announced they were ready for trial; the following proceedings were had:

Mr. McLean: Before beginning, your Honor, I would like the record to show that I am appearing for Howard Stabler who, as the Court knows, is somewhat incapacitated to conduct the trial.



The Court: Yes. Very well. [1\*]

Mr. Boochever: Your Honor, I assume you would like brief opening statements at this time?

The Court: Yes. I have read the file but——

Mr. Boochever: This case involves, is of the nature of, a specific performance for a contract action. It concerns an agreement between Mr. Pekovich and the Admiralty Alaska Gold Mining Company with Robert E. Coughlin, who is now deceased. The action is being brought by Mrs. Coughlin, the widow and executrix of the Estate of Robert E. Coughlin, deceased.

The plaintiff will show, and it is admitted, that in February, 1954, Robert Coughlin entered into an agreement with Mr. Pekovich, who was the manager of the Admiralty Alaska Gold Mining Company, and with the Company whereby he was to do the bookkeeping services and other services in connection with the Defense Mineral Exploration Administration contract and in exchange he was—he was getting a normal salary and then this specific agreement as an inducement for him to take the job—offered him four thousand shares of stock; and it is admitted that Mr. Coughlin did the work required of him until his death; and it is admitted that he never received the four thousand shares of stock; and that is what the Estate is suing for, to get those four thousand shares of stock.

Now, we feel that we will prove our case by proving the authority of the executrix to sue, proving

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\*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

that the [2] agreement, which is admitted, that the work was performed and the shares not received. Now, there will be other issues, I know from the answer, that will come before the case. The defendants are contending that this agreement was later modified so that in lieu of the stock Mr. Coughlin was to receive a salary of seventy-five dollars a week—a month.

We believe that we can show definitely that there was no such modification and that the original agreement and at all times he was to receive the seventy-five dollars a month and that this four thousand shares was an added inducement for him to take the job at that small salary; and that, briefly, will be the plaintiff's case, your Honor.

The Court: Very well. Do you wish to make a statement at this time?

Mr. McLean: Very briefly. The Court will no doubt notice in the trial memorandum that has been filed that the letter from Mr. Pekovich and the Alaska Admiralty Mining Company is admitted, but in lieu of the four thousand shares of stock the plaintiff's intestate, Mr. Coughlin, drew cash, a seventy-five-dollar salary per month, which amended the contract in that respect. He drew that and in turn gave up his right to any of the stock. The contract, the letter, that the plaintiff relies on is self-explanatory; and the witness we intend to introduce is the party who actually wrote the agreement, and he, in turn, is the best witness as [3] to the transaction as to what it meant, but we intend to show, too, your Honor, that there is no question but what

Mr. Coughlin was fully compensated for all the services that he did render to the corporation without payment of the stock which he in turn had deliberately gave up to draw the cash salary instead.

### Plaintiff's Case

#### MINNIE COUGHLIN

called as a witness on her own behalf, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Boochever:

Q. What is your name, please?

A. Minnie Coughlin.

Q. And, Mrs. Coughlin, are you the widow of Robert Coughlin?           A. I am.

Q. And when did Mr. Coughlin die?

A. September 22, 1955.

Q. And are you the executrix of the Estate of Robert Coughlin, Deceased?           A. Yes.

Q. Have you been authorized by the Probate Court at Juneau to bring this suit?           A. Yes.

Q. I show you what purports to be a certified true copy of [4] the order of the Probate Court and ask you if you can identify that?

A. Yes; I can.

Q. Is that the order authorizing you to bring this action?           A. Yes.

Mr. Boochever: (Handing document to counsel for defendants.)



(Testimony of Minnie Coughlin.)

Mr. McLean: No objection.

The Court: It may be received.

Mr. Boochever: I offer that as Plaintiff's Exhibit 1.

The Clerk: It is so marked.

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PLAINTIFF'S EXHIBIT No. 1

In the Probate Court for the Territory of Alaska,  
First Division, Juneau Precinct

In the Matter of:

The Last Will and Testament and Estate of  
ROBERT E. COUGHLIN, Deceased.

ORDER

This matter coming on to be heard upon the motion of Minnie Coughlin, executrix of the estate of Robert E. Coughlin, deceased, for leave to file suit against Sam Pekovich and/or Admiralty Alaska Gold Mining Company, a corporation, good cause having been shown, it is hereby ordered that Minnie Coughlin as executrix of the estate of Robert E. Coughlin be and she is hereby authorized to file suit against Sam Pekovich and/or Admiralty Alaska Gold Mining Company.

Done in Open Court this 11th day of February,  
1957.

/s/ H. C. LEEGE,  
U. S. Commissioner and Ex-Officio Probate Judge,  
Juneau Precinct.

(Testimony of Minnie Coughlin.)

United States of America,  
Territory of Alaska—ss.

I, the undersigned U. S. Commissioner for the Juneau Precinct, First Judicial Division, Territory of Alaska, do hereby Certify that the foregoing is a full, true and correct copy of the original and/or official copy on file and of record in this office.

Witness my hand and official seal this 1st day of April, 1957.

[Seal]      /s/ MARIE DAY,  
Deputy United States Commissioner and Recorder,  
Juneau Alaska.

Received in evidence April 2, 1957.

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Q. (By Mr. Boochever): Mrs. Coughlin, do you know if your husband ever went to work for Admiralty Alaska Gold Mining Company?

A. Yes.

Q. And do you know if he ever entered into an agreement with the defendant, Mr. Pekovich, in regard to the work that he was to perform for Admiralty Alaska Gold Mining Company?

A. Yes; he did.

Q. Do you know what the agreement was?

A. It was that he should primarily do bookkeeping. However, that was extended considerably.

Mr. McLean: Your Honor—— [5]

(Testimony of Minnie Coughlin.)

The Court: Wait a minute.

Mr. McLean: At this time I would like to insert an objection. The witness has stated she knows, but I believe, your Honor, it would be proper for the plaintiff to either introduce the basis on which she knows—I don't like to be objecting to irregularities. I suppose it is all preliminary and leading up to tangible evidence, but I think we should find out how she knows and——

The Court: I think it is dangerous to get into a narrative recital, Mr. Boochever. I think that the witness should confine herself to direct answers to the questions and not recite the whole story. You may be getting into the realm of inadmissible evidence.

A. Well, I haven't, have I? I thought I was just answering the direct question.

Q. (By Mr. Boochever): Well, Mrs. Coughlin, do you know if your husband entered into a written agreement at one time with Mr. Pekovich?

A. Yes.

Q. I show you what purports to be a letter from Mr. Pekovich, written on Admiralty Alaska Gold Mining Company, to Mr. Coughlin and ask you if you can identify that?

A. Yes; I can.

Q. What is that?

A. Well, it is a statement, an informal letter, addressed [6] to Mr. Coughlin, promising four thousand shares of Admiralty Alaska stock for——

Q. Certain services?

A. ——certain services.

(Testimony of Minnie Coughlin.)

Mr. Boochever (Handing document to counsel for defendants): I request that this be introduced as Plaintiff's Exhibit No. 2.

The Court: Any objection?

Mr. McLean: No.

The Court: It may be received.

The Clerk: It is so marked.

Feb. 5-54

ADMIRALTY ALASKA GOLD MINING CO.  
JUNEAU ALASKA

MINE OFFICE:  
FUNTER BAY, ALASKA

MAIN OFFICE  
Box 529, JUNEAU, ALASKA

Mr R. E. Doughlin.  
Junior Stocker

Dear Bob

This will confirm my understanding with  
you that of you. Take care of the Bookkeeping and  
other necessary things in the connection with the  
D & A. Admiralty Alaska matter. I will  
give you in compensation that four or. Come  
to be given you 4.000 four thousands shares,  
of the Admiralty - Stocker Gold. might stock  
in return. etc. of my hand.

W. J. Peacock

P.H.F.'s EXHIBIT NO. 2  
RECEIVED IN EVIDENCE

APR 2 1957

IN CAUSE NO. 3605-9  
By W. J. Peacock Clerk  
Deputy





(Testimony of Minnie Coughlin.)

Mr. Boochever: Your Honor, it might be advisable if we read that letter at this time. I think the handwriting is a little difficult to read because Mr. Pekovich's handwriting is somewhat like mine and is hard to make out.

Mr. McLean: We will waive reading of it.

Mr. Boochever: Well, I thought it might help the Court, except that, I guess, it is attached to the pleadings.

The Court: It is attached to the pleadings. Unless you have some question about it, we will——

Mr. Boochever: The copy, I think, is admitted as true, so I think that will cover it all right.

Q. (By Mr. Boochever): Now, Mrs. Coughlin, do you know if your husband performed the services he was supposed to perform under that agreement? [7]

A. Yes; he did.

Mr. McLean: I object, your Honor. I believe, again, that we are getting into the realm of——

The Court: I think that is a conclusion, Mr. Boochever.

Q. (By Mr. Boochever): Do you know if your husband ever received the four thousand shares of stock?

A. He did not.

Q. And would you have known from your relationships with your husband? Did he tell you if he got anything of that nature?

A. Yes; he did.

The Court: Well, it is admitted, that he didn't get it, in the pleadings.

Mr. Boochever: Very well, your Honor. The plaintiff rests, your Honor.

The Court: Cross-examine?

Mr. McLean: No cross-examination, your Honor.

The Court: You may step down.

Mr. Boochever: Your Honor, we feel we have made out a prima facie case at this time and in view of the admissions in the complaint, and we rest.

Mr. McLean: Your Honor, I am somewhat surprised to some extent at the limited amount of evidence that the plaintiff has introduced. I wish at this time to move for non-suit. [8]

In the first place, the only evidence actually on record is this letter, and the letter has indicated just the one element of compensation for certain work. Apparently, the plaintiff is relying upon a statement that he had performed certain work for the corporation, and, I believe, your Honor, that the witness has actually brought out the fact that, this particular letter, an agreement was entered into, but there is no indication that any other compensation was paid to him, as the Court has no doubt noticed from the pleadings that there was other compensation, and, since it has not been actually explained to the Court by the plaintiff in her case that no compensation at all was received, then I believe there is not sufficient evidence, your Honor, to support any further case on the part of the plaintiff.

I think at this time we are entitled to non-suit for failure to make out a case, especially in the light of



an affirmative defense that has been made a part of the record.

The Court: Well, that, of course, is a matter of defense. I believe that we have the situation here of this letter, which is the basis of the suit, the admission that the four thousand shares was not turned over as this letter said, and the testimony of the wife of the deceased that he did do the work to her knowledge. Now, that, I think, makes a prima facie case, and I will have to overrule your objection—your motion. [9]

Mr. McLean: Your Honor, at this time I would like to ask for a five-minute recess to consult with my client before presenting our case. I had several witnesses that I had asked to come up at 2:00 o'clock this afternoon. I had assumed that the plaintiff was going to occupy most of the morning. I have two witnesses here, however, and in the course of five minutes I will have the case laid out so that we can proceed, and I will ask for a five-minute recess.

The Court: Very well. I will give you a ten-minute recess.

(Whereupon, Court recessed for ten minutes, reconvening as per recess, with all parties present as heretofore; and the trial proceeded as follows.)

The Court: You may proceed.

## Defendants' Case

## WASO SIVIN PEKOVICH

called as a witness on behalf of the defendants,  
being first duly sworn, testified as follows:

## Direct Examination

By Mr. McLean:

Q. For the record, Mr. Pekovich, would you give your full name?

A. Waso (W-a-s-o) Sivin (S-i-v-i-n) Pekovich (P-e-k-o-v-i-c-h).

Q. Are you the defendant in this action whose name was [10] spelled in the complaint P-e-c-k?

A. That is right. My initials, I signed initials —“W.S.”

Q. And the correct spelling of your last name is P-e-k instead of Peck?

A. That is right. No “c.”

The Court: P-e-k-o?

A. P-e-k-o; no “c.”

Mr. Boochever: Your Honor, I will move that the “c” be stricken from the name in the title of the case.

A. It can't be confused with anybody anyhow.

The Court: The motion will be granted correcting the name of the defendant.

Q. (By Mr. McLean): Mr. Pekovich, what is your connection with the Admiralty Alaska Gold Mining Company?

A. I am sorry to say, general manager.

(Testimony of Waso Sivin Pekovich.)

Q. How long have you been acting in that capacity?      A. About forty years.

Q. Did you know Robert E. Coughlin?

A. Very well.

Q. How long have you known Mr. Coughlin?

A. Roughly, probably twenty-five years, or in that neighborhood; not exactly.

Q. Prior to February, 1955, did Mr. Coughlin have a position in the Company?

A. He was vice-president a few years before. I don't know [11] just how long.

Q. You have seen the Plaintiff's Exhibit No. 2, which purports to be a letter that you had written. Can you identify that as the letter you wrote to Mr. Coughlin?

A. Yes, I do; in my own handwriting.

Q. Did you write that in your capacity as general manager of the company?      A. I did.

Q. Would you please tell the Court, Mr. Pekovich, prior to the time you wrote that letter what was the salary paid to the secretary-treasurer of the Company?      A. Seventy-five dollars a month.

Q. What did that include?

A. All the work that was necessary in connection with that work that was done over there.

Q. Who was the secretary-treasurer prior to the date of this letter?      A. Chris Ehrendreich.

Q. And you said his salary was seventy-five dollars a month. What did that include besides the ordinary bookkeeping of the Company?

A. Well, mostly bookkeeping and auditing of

(Testimony of Waso Sivin Pekovich.)

the books in compliance with the regulation of D.M.E.A. We were acting with D.M.E.A. money and required somebody that could keep correct accounts. [12]

Q. Did the secretary-treasurer furnish anything else?

A. Oh, he furnished his office and all that, that he was connected with. We didn't have an office of our own at that time.

Q. Now, at the time you wrote that letter to Mr. Coughlin you used the language "if you take care of the bookkeeping and other things in the connection with the D.M.E.A." Did you mean that he'd take over the work of secretary-treasurer?

A. Yes, I did.

Q. Your letter further reads, "I will give you in compensation therefor or cause to be given you four thousand shares of the" stock. What did you mean by that?

A. Well, "cause" to give him, I thought if the board of directors don't agree with my agreement that I would pay it myself, personally; that is why "I give you or cause to be given to you."

Q. But it wasn't actually the company—it was on behalf of the company that you wrote the letter?

A. Oh, yes.

Q. And why was it that you specified four thousand shares of stock?

A. Because at that time the company was practically to zero financially, and we had been struggling for a long time before to meet matching gov-



(Testimony of Waso Sivin Pekovich.)

ernment loans and all, and I [13] think we didn't have at that time in the bank only a few hundred dollars; Bob knows as well as I did, and probably better, because he was vice-president of the company; and I could not ask him to do the work for nothing, so I gave him the stock, which at that time was worth around eight hundred dollars.

Q. Mr. Pekovich, when you wrote the letter, did you intend that that be the salary for the work of secretary-treasurer? A. I did.

Q. Now, subsequently to that date did anything transpire as far as the secretary-treasurer's salary was concerned?

A. Soon after that time, I think the beginning of March, I went to New York. I raised about twenty-five thousand dollars of my own, which I put at the disposal of the company and at the disposal of Bob, and from that time on he drew the salary right along.

Q. And then you say he drew a salary?

A. Yes. He drew a salary of seventy-five dollars a month.

Q. Now, prior to the time he drew the salary and when you entered into this agreement or wrote the letter was the four thousand shares of stock for the salary? A. It was originally intended to.

Mr. Boochever: Well, I object to that, as the agreement shows what the intent was, your [14] Honor.

Mr. McLean: I would rely upon that, too, and agree that the letter is self-explanatory as far as

(Testimony of Waso Sivin Pekovich.)

the contents of it are concerned, but the witness is entitled to give his interpretation of it since he wrote it.

Q. (By Mr. McLean): Mr. Pekovich, you said that Mr. Coughlin drew a salary of seventy-five dollars a month while—after you had obtained some monies from New York?

A. The first two or three months he didn't draw the salary because he didn't have the money. Then he accumulated, drew accumulated, I think, two hundred and twenty-five dollars at one time, but it was covering from the time he took over.

Q. Did you consent to the withdrawal of that as a salary?

A. Oh, yes. I consented to that; and, as a matter of fact, if I had the money at that time, I wouldn't have asked him otherwise.

Q. And what was your understanding on the withdrawal of that salary in the form of cash?

A. That was a full compensation when he was drawing seventy-five dollars. That is the same salary as we paid before.

Q. And, if it was the same salary before, was it the same amount of work and office facility furnished?

A. I think, if anything, there was less work done during that time than during the first period, and during the first period the secretary-treasurer furnished his own [15] office and light and phone, whatever was necessary.



(Testimony of Waso Sivin Pekovich.)

Q. Did Mr. Coughlin furnish his own light and——

A. No. We hired our own office after that time and continued to do that.

Q. Now, in other words, you say the company was now furnishing an office and telephone?

A. That is right; and all facilities that was necessary. They expected clerical work.

Q. What was your understanding, Mr. Pekovich, after you noted that Mr. Coughlin was drawing the salary?

A. My understanding was it was paid in full, and that, I am quite sure, Bob's understanding also, because he never mentioned——

Mr. Boochever: I must object to that, your Honor. It is improper to state what another man's understanding was.

The Court: What the deceased understood will be stricken.

Mr. McLean: Do I understand by the Court's ruling that the Court is excluding any conversation this defendant had with the deceased?

The Court: If it is equally within the knowledge of the deceased and no other person, I expect we would.

Mr. McLean: I believe it is perfectly proper for the witness to tell the Court what conversation he had and what the deceased replied to him. [16]

Mr. Boochever: Your Honor, I have no objection to his relating any conversation with the deceased in view of our statute, Section 58-6-1, which

(Testimony of Waso Sivin Pekovich.)

permits such conversations, but I do object to his stating what the deceased understood, because he certainly can't tell what the deceased understood.

The Court: I appreciate your quoting me the statute. I didn't know that you had such a provision here. So, I do not exclude the testimony of the conversation, providing the words are used and not the conclusions.

Q. (By Mr. McLean): What conversation did you have with Mr. Coughlin with respect to withdrawing the salary, Mr. Pekovich?

A. Well, as a matter of fact, I don't know that we had any conversation, but we did have a conversation about assuming stock for the payment to following annual meeting.

Q. And what was the conversation, as best you can remember, as to Mr. Coughlin's claim on the stock after he had been drawing the salary?

A. He never did claim the stock.

Q. You say he—— A. No; he didn't.

Q. Can you recall what, in effect, Mr. Coughlin told you with respect to his claim on the stock?

A. He never told me anything. That wasn't brought up at all, one way or the other. After he started drawing [17] salary he finished that year that way. Then he started another year and was up to September on the same salary without any stock, without any other compensation except the seventy-five dollars a month.

Q. And do you recall any conversation as to whether he was satisfied with that?

(Testimony of Waso Sivin Pekovich.)

A. Well, of course, he was satisfied. If he wasn't, he wouldn't have to do it.

Q. Did Mr. Coughlin have other stock in the company, Mr. Pekovich?

Mr. Boochever: Wait a second. Your Honor, I think the statement "of course he was satisfied" doesn't answer the man's question, and it is again going into Mr. Coughlin's thoughts and so forth, which he can state any evidence that he has but he can't state whether the man was satisfied or not.

A. Well, the assumption is that, if he wasn't satisfied, he wouldn't have done it.

The Court: That is a matter for the Court to decide on the facts; and you, Mr. Pekovich, can testify as to what he stated to you in reference to your agreement on that occasion. Did you talk with him when you came back from New York with the money?

A. No; I didn't.

The Court: You didn't talk to him?

A. I didn't talk to him at all. [18]

The Court: Go ahead.

Q. (By Mr. McLean): Mr. Pekovich, after you returned from New York did you discuss the financial condition of the company with Mr. Coughlin?

A. He knew it better than I did because he was secretary-treasurer.

The Court: That doesn't answer the question, Mr. Pekovich.

A. I did not.

(Testimony of Waso Sivin Pekovich.)

The Court: You don't know what he knew and you can't look into his mind. We can't——

A. I am sorry.

Q. (By Mr. McLean): Mr. Pekovich, though, did you ever discuss with Mr. Coughlin the amount of money in the bank after you came back from New York?

A. I did. The only money that was in the bank was what I put in myself.

Q. And did you tell, or did Mr. Coughlin indicate to you that he deposited that money in the bank?

A. Oh, yes; I think he did. He borrowed that money, put it in the bank, and paid the bill. That is the only money that the company had.

Q. Mr. Pekovich, now, since you were the general manager of the company, did you work closely with Mr. Coughlin, as secretary-treasurer? [19]

A. In a sense, no; and I wasn't working with the secretary-treasurer before either. They had their own business, and I had mine.

Q. Did you not share the same office, Mr. Pekovich?

A. No. I was the most of the time over at the mine.

Q. Now, you say that, I believe your testimony earlier, Mr. Pekovich, was that Mr. Coughlin also owned stock in the company; is that true?

A. Yes. I gave him one thousand shares free to qualify him as a vice-president, I think, two or three years previous to that.



(Testimony of Waso Sivin Pekovich.)

Q. About what year would that be?

A. Beg pardon?

Q. About what year was that?

A. A couple of years before that, probably 1952 or something like that; I couldn't tell exact, but our minutes would show that.

Q. Was that an outright gift to Mr. Coughlin?

A. Absolutely; to qualify him as a director.

Q. And did he perform the work normally done as a vice-president of the company or a director of the company?

A. Our directors and officers are not paid any stated salary at all.

Q. Did he attend the directors' meetings?

A. Yes; he did. [20]

Q. As a vice-president?

A. Yes, he did. But, I mean, there was no compensation paid to any officer or director.

Q. Let me ask you again, Mr. Pekovich—subsequent to the appointment of Mr. Coughlin as secretary-treasurer in February, 1954, was there any salary to be given to Mr. Coughlin as secretary-treasurer?

A. Seventy-five dollars a month, that was previously paid.

Q. Previously paid?                      A. Yes.

Q. Now, when you appointed Mr. Coughlin, was he to get seventy-five dollars a month salary when you appointed him?

A. I didn't appoint him. The board of directors appointed him.



(Testimony of Waso Sivin Pekovich.)

Q. Now, did you discuss with Mr. Coughlin what the salary was to be?

A. He knew that all the time.

The Court: Now, that, you see——

A. Well, I didn't.

The Court: How would he know if you didn't discuss it with him?

A. Because it was, I think, a part of the minutes, your Honor.

The Court: All right. Let's have the [21] minutes.

A. I think it is part of the minutes that he was paid seventy-five dollars a month, and the one previous was paid seventy-five dollars a month for a year and a half, too, and the one after him was paid seventy-five dollars a month. That was the established payment for the amount of work that was done.

Q. All right. Mr. Pekovich, why did you write the letter to give him four thousand share of stock then?

A. Because we didn't have the money and in lieu of salary.

Mr. Boochever: Your Honor, at this time I would like to make a demand on the defendants to produce the minutes of the corporation—they can do it at the noon hour if they don't have them here—for inspection.

Mr. McLean: I see no reason to bring out the minutes, your Honor. That isn't the question before the Court. The question before the Court is simply

(Testimony of Waso Sivin Pekovich.)

—was this four thousand shares of stock to be given in lieu of salary or in addition to salary.

The Court: Are you seeking to bind the corporation?

Mr. Boochever: Your Honor. I believe, in view of the witness' testimony that the minutes show the agreement to pay seventy-five dollars a month, that it might have some bearing on this. I don't know whether it would or not, but I think that I am entitled to inspect them and see if they do have a bearing on it. [22]

The Court: Do you contend that by this document the corporation is bound by this document?

Mr. Boochever: I think it is possible that it could be. I don't know, your Honor, without seeing it, but I contend that I am entitled to look at it and see.

The Court: The corporation is a defendant here, isn't it?

Mr. Boochever: That is right, your Honor; yes.

The Court: Well, I don't think the corporation could be bound unless they had approved the agreement. It is an ultra vires act on the part of an officer unless he had authority, and the authority must be shown.

Mr. Boochever: That is correct, your Honor, as far as the corporate liability is concerned; and the minutes would tend to show that, too; they could show that, as to whether it is binding on the corporation or just on Mr. Pekovich.

Mr. McLean: Your Honor, I still oppose the de-

(Testimony of Waso Sivin Pekovich.)

mand on the grounds that plaintiff's suit is one for specific performance, delivery of the stock, and, as to what the minutes might contain, I wouldn't be surprised if one of our later witnesses will testify as to what the records of the company are, but I see no point in——

The Court: I think the records of the company would be the best evidence. [23]

Mr. McLean: Well, the letter has been introduced by the plaintiff as the best evidence, the entire agreement, and I think that, if the plaintiff wants to seek a monetary compensation instead of what the agreement stated, that would be an altogether different case. The case is for four thousand shares of stock, your Honor, and not for——

Mr. Boochever: The complaint asked for four thousand shares of stock or their fair market value in lieu thereof if they aren't able to transfer the shares of stock.

The Court: Well, you haven't put on any testimony as to what the fair market value is.

Mr. Boochever: No, I haven't as yet, your Honor; I haven't done that; but that is in the complaint, and, as a matter of fact, we had orally stipulated—this isn't in the record—that, if it were necessary, we could put that on later if there was liability determined, but that isn't in the case yet, either. But I think that, regardless of that—what reason have they got to withhold permission to inspect the minutes? I mean, all of the modern rules

(Testimony of Waso Sivin Pekovich.)

permit the free inspection, and there is no reason shown at all, unless they want to hide something.

Mr. McLean: Well, your Honor, I don't want to be technical about this, but the plaintiff has already presented his case and he rested. It was within his right to subpoena and have one of the corporate officers present with records, [24] if necessary, and introduce that as part of his case, and I see no reason why, when the defendant is testifying, he should try to bring in evidence to support his case out of the defendants' portion of the trial, unless he can bring it out on cross-examination and——

Mr. Boochever: Your Honor, of course, we could serve a subpoena duces tecum on Mr. Pekovich in the noon hour if counsel feels that that is necessary, but I think the Court, in its power, can easily order them to do it before then.

The Court: I think they ought to have them here if they are available. If the demand is not complied with and if the Court agrees, which I do, they can introduce secondary evidence. But, the thing that strikes me here, you can't be strictly technical in one phase and not in the other. The action here is an equitable action for specific performance; isn't that the——

Mr. Boochever: It is a combined equitable and legal action, your Honor. It is for specific performance for the stock and then it also is in lieu thereof or in the alternative for the fair market value if they don't produce the stock.

The Court: Well, so far, here is what we have:



(Testimony of Waso Sivin Pekovich.)

Now, let's look at it coldly. We have a company that had ordinarily paid the secretary-treasurer for this work and other work the sum of seventy-five dollars per month, according to the testimony. The company was broke when they made this deal [25] with Mr. Coughlin, who had formerly been a vice-president and was very familiar with the situation of the company, so Mr. Pekovich, the defendant herein, wrote this letter. Thereafter, Coughlin, the deceased, drew seventy-five dollars per month. Now, certainly, he can't get both the stock and the money.

Mr. Boochever: Oh, your Honor, that is the whole point of our case, that he would never have undertaken to do this work for seventy-five dollars a month.

The Court: Well, it had been undertaken by——

Mr. Boochever: Well, it had; that is true; and the previous man quit; and the inducement was to give him the four thousand shares so that he would do the work for seventy-five dollars a month; and we will show that conclusively before——

The Court: Well, all right; you will have to show it conclusively.

Mr. Boochever: That is right; we intend to, your Honor.

The Court: All right. Well, I have analyzed it up to now, and that is why I think it is important that the records of the company be here.

Mr. McLean: We will bear that in mind, your Honor.



(Testimony of Waso Sivin Pekovich.)

Mr. Boochever: Well, I wonder if we could set a time for me to inspect them at 1:30, if that is satisfactory to counsel, at the Clerk of the Court's Office. [26]

Mr. McLean: Your Honor, to tell you the truth, I am not too familiar with the corporate records myself. I presume they are in town, and I think it can be done, and, certainly, we will, if necessary, make what portions of the minutes apply to this case available, and we won't obstruct any justice in that respect.

Mr. Boochever: Well, I would like to see the minute books themselves for the period of 1954, all the year 1954.

Mr. McLean: I think we can get together on it at 1:30, your Honor.

The Court: Very well. You may proceed.

Q. (By Mr. McLean): Now, one other question, Mr. Pekovich, with regard to the secretary-treasurer's position prior to the time Mr. Coughlin took over. You said Mr. Ehrendreich was the secretary-treasurer? A. That is correct.

Q. Besides that work, did he do other work, or did he hold himself out in any professional capacity to do other work? A. I think he did.

Q. What is his title?

A. Certified public accountant.

Q. And you said he furnished the office space and other incidentals? A. He did. [27]

Q. And in February, 1954, the company appointed Mr. Coughlin. What background and train-

(Testimony of Waso Sivin Pekovich.)

ing did Mr. Coughlin have to your knowledge on accounting?

A. Oh, I think enough for that kind of purpose. I don't know if he was an accountant—I don't think—but he was a good bookkeeper and all that and——

Q. And you say that——

A. He was a purser on the boat for a long time and so he was accustomed to detail, I think.

Q. And you say he did the work in an office furnished by the company?

A. That is right.

Q. Did he do any other work in that office?

A. I think he was keeping the Pioneers' books.

Q. Anybody else's?

A. And his own business, I think.

Q. What is that business?

A. Island Transportation.

Q. And you say that he did the bookkeeping for those two groups in the office of the Admiralty Alaska Gold Mining Company?

A. I think so. And he was purser on the boat at the same time.

Q. And he also did that work in the office; is that what you say? [28]

A. Not only that, but he was out with the boat every week, you know, practically all week.

Q. Do you have any knowledge as to how much time this job actually took?

A. I don't. That depends on just how the necessities on his work.

(Testimony of Waso Sivin Pekovich.)

The Court: May I inquire here what "D.M.E.A." means?

A. Defense Mineral Administration.

Mr. Boochever: It is Defense Mineral Exploration Administration, your Honor, under the Department of Mines. It gives loans for exploration work on mining property, and they loan money on a basis of a certain percentage being paid by the company, and the Defense Mineral Exploration Administration advances the balance of the money necessary for exploring mining property.

The Court: Do they do that in gold mines, too?

Mr. Boochever: Various types of minerals and on different percentages, your Honor.

A. Nickel, copper and cobalt, primarily, in our case; and they furnish ninety per cent; we furnish ten per cent; and they changed the second loan to give us sixty-six and two-thirds against——

The Court: Well, I was misled by the word "Gold" in the name of the company. [29]

A. The name of the company is Admiralty Alaska, but we have nickel, copper and cobalt at the same time.

The Court: All right. Go ahead—we will take a short five-minute recess.

(Whereupon, Court recessed for five minutes, reconvening as per recess, with all parties present as heretofore; and the trial proceeded as follows.)

Q. (By Mr. McLean): Mr. Pekovich, Plain-

(Testimony of Waso Sivin Pekovich.)

tiff's Exhibit No. 2, the letter you wrote to Mr. Coughlin, carries the date of February 5, 1954.

A. That is the date of our meeting, the 10th or nearby.

Q. You remember that meeting and some of the particulars?

A. Oh, sure; I don't remember an exact date, but I remember it was in February, the first Monday in February.

Q. Now, Mr. Pekovich, can you recall what you said to Mr. Coughlin and what Mr. Coughlin said back to you when you handed this agreement to him?

A. Even before that particular meeting we knew that Mr. Ehrendreich was going to give up the position because him and I didn't get along very well, and it is a matter of fact, as far as I can recollect, Bob and I talked about it; we must stop because we didn't have any money, but we have to wait until the meeting; and as soon as the meeting was over I give him that in writing because, figuring that one of us or the other doesn't live, then [30] we have something in writing. That is my handwriting that nobody else can write that way.

Q. All right. Now, what did Mr. Coughlin say to you when you handed him this letter?

A. He was perfectly happy about it.

Q. What did he say? Can you recall any words?

A. I don't in exact words. But stock at that time was worth a whole lot more than one year's salary. It was around, I would say, twenty cents or twenty-



(Testimony of Waso Sivin Pekovich.)

five cents. Your Honor, it changes on the market from day to day, but it was at that time worth more than his salary for one year.

Q. Now, following that thought then, Mr. Pekovich, I would like to ask you what the value of four thousand shares of stock would be as of February 5, 1954?

A. Roughly, without the exact figure, I would say around one thousand dollars and in that neighborhood; nine hundred anyway. I think it was around twenty-two or twenty-three cents a share.

Q. Did the price change after February 5, 1954?

A. Oh, yes. The Security & Exchange started investigating the company, and then the stock dropped down, I think, below ten by April or May or something like that.

Q. Below ten cents a share, you mean?

A. That is right.

Q. In other words, the value of four thousand shares of [31] stock in April would be substantially lower than what it was in February?

A. It wasn't even half the price to my recollection, less than half the price at that time.

Q. Did you and Mr. Coughlin discuss that?

A. Well, he knows it.

Q. Did you talk with him about that?

A. Of course we did, every day. I mean, whenever we talk about the stock; we were fighting with the Security & Exchange. Bob was writing letters, and I was writing letters. And finally, when the



(Testimony of Waso Sivin Pekovich.)

company was cleared, the stock started going up again.

Q. Did you in April or May of 1954, did you and Mr. Coughlin discuss the value of four thousand shares and whether it had raised or dropped?

A. No. I think I was in New York by that time. I was raising money over there to send for him to operate the company.

Q. Now, I want to go back and ask you again, Mr. Pekovich, since this is direct examination, and I am not trying to suggest an answer to you, but I want you to tell the Court, Mr. Pekovich, your best recollection of what you said to Mr. Coughlin when you handed him this agreement and what he said to you.

A. Oh, as to that, my recollection on that is very clear. I [32] told him, "At the present time stock we cannot sell but is worth more than so many thousand or so many hundred dollars and is worth more than salary," and he agreed that stock eventually would go up.

Q. Did he say that?

A. Oh, yes, he did; and everybody else did, for that matter; and stock did go up after the Security & Exchange in July or August cleared the company from any blame, and then the stock went up, and, as a matter of fact, went up to a dollar or more, not at that time but just last summer. Stock is no stable value to it, up and down, traded in every day.

Q. And what did Mr. Coughlin say to you of his

(Testimony of Waso Sivin Pekovich.)

desire to have a certain number of shares of stock when he took the job as secretary-treasurer?

A. He was very happy about it.

Q. Did he say anything to you about the number of shares or anything like that?           A. No.

Q. Whose idea was it—four thousand shares?

A. My own; to amply compensaate him under conditions that was at that time.

Q. Why did you put four thousand shares, that particular number?

A. Because it was in round figures approximately what his [33] salary would amount to.

Q. For how long a time?

A. Up to the next meeting, for one year.

Q. How often do the board of directors of the Admiralty Alaska Gold Mining Company meet?

A. Unless it is a special call, once a year, annual meeting.

Q. You say that your position is general manager. Who are the other directors of the company?

A. Mr. Roden; Henry Roden is president.

Q. Let me ask—where is Mr. Roden now?

A. I have no idea. He is in Seattle for all I know.

Q. Is he in Juneau?

A. No; not that I know of, unless he got in since yesterday.

Q. That is Mr. Henry Roden, an attorney in Alaska; is that who you mean?

A. That is right.

Q. Who is the name of another director?

(Testimony of Waso Sivin Pekovich.)

A. Jerry Williams is one of them.

Q. Is that Mr. Williams, the Attorney General of the Territory?

A. That is right. He is a vice-president.

Q. He is a vice-president. Who else is a director of the company?      A. Burke Riley.

Q. Burke Riley is an attorney? [34]

A. From Haines; and he used to be from Juneau.

Q. Do you know where he is now?

A. He lives in Haines, I think. I saw him this morning but I think he lives in Haines.

Q. Who else is a director?

A. And Otto Erickson from Seattle, and Mr. Dapceovich over there.

Q. But at that time, in February, 1954, before Mr. Dapceovich entered the company, who was the other director?

A. I think Norman Stines was at that time director too. He is dead now.

Q. Can you recall who the other, the one remaining, director was? Could it be that Mr. Coughlin was a director?

A. Oh, yes; he was vice-president; sure, but I mean, I never was officially connected with the company at any time, so the directors that they have and officers and all that is outside of my line.

Q. At the time of the directors meeting in February, 1954, was the bank balance discussed at the directors meeting?

A. I presume it did, but that wasn't—I gave them a report on mining operation. No; for all

(Testimony of Waso Sivin Pekovich.)

practical purpose I was out of that. I have nothing to do with the business of the company or finances of the company. That is handled by the board of directors.

Q. And is it your testimony that the company was broke, or [35] about that, with the exception of a few hundred dollars, in February, 1954?

A. I think so.

Mr. Boochever: I think this is repetitive, and also it is a leading question, your Honor, and I object.

Q. (By Mr. McLean): What was the condition, the financial condition, of the company in February, 1955, one year after you signed this agreement?

A. You mean in '54?

Q. No. You signed this in 1954. One year afterwards what was the condition of the company?

A. I think it was much better; I think it was much better because we got quite a lot of money from that time one.

Q. Did Mr. Coughlin ever make a demand upon you for four thousand shares of stock?

A. He never did.

Q. Did Mr. Coughlin ever say anything to you about the four thousand shares of stock?

A. Not any more.

Q. Did he ever say anything to you about being satisfied with the salary?

A. No, not in that many words. I never asked that question. We never discussed that.

Q. But, certainly, you knew this letter was in



(Testimony of Waso Sivin Pekovich.)

existence, didn't you? [36]           A. Oh, sure.

Q. Did you wonder where it was or ever ask him about it?

A. Well, if I may express it in my own words—I borrowed from Bob two thousand dollars and I gave him two thousand dollars back with six per cent interest, and he still has the note for all I know. He was a friend of mine for twenty-five years, and it isn't like dealing with somebody from the woods some place.

Q. By that you mean, Mr. Pekovich, that you repaid a two-thousand-dollar loan to Mr. Coughlin and never——

Mr. Boochever: I object.

A. No. He gave it to me.

The Court: I think the objection is well taken. That has nothing to do with this case. It may tend to show the relationship between the parties as to why they may have done some things in this case, but I don't think it is necessary to go into the particulars of that case, so I will sustain the objection.

Mr. McLean: No further direct examination. Your witness.

The Court: You may cross-examine.



(Testimony of Waso Sivin Pekovich.)

Cross-Examination

By Mr. Boochever:

Q. Mr. Pekovich, at all these times, I believe you said, you [37] were general manager for the Admiralty Alaska Gold Mining Company?

A. That is right; since 1916.

Q. And you had the authority to hire the bookkeeper for the corporation?

A. Not exactly bookkeeper; but I had to hire labor and anything like that, and the bookkeeper, as a matter of—I did, the bookkeeper on the mine; yes.

Q. And did you hire Mr. Coughlin as bookkeeper? A. No. The board of directors.

Q. The board of directors did?

A. It was the board of directors' function. They was the officers of the company.

Q. Were you at the board of directors meeting when he was hired?

A. I don't know that I was. I was at the annual meeting, but at the board of directors meeting I don't know that I was.

Q. That was the annual meeting of the stockholders or the board of directors?

A. Stockholders; and board of directors followed the stockholders meeting. I was at the stockholders meeting; yes.

Q. Did you say you made a report to the directors? A. Yes, I did.

Q. Then you were at the meeting, weren't you?

(Testimony of Waso Sivin Pekovich.)

A. Not to the directors; the stockholders and directors, an [38] annual meeting; then according to our bylaws the directors meeting followed that, after the stockholders meeting was closed.

Q. Now, you gave Mr. Coughlin this agreement, didn't you, on your own that was, and it was with the understanding that, if the board of directors approved it, why, then you would give him the stock, and, if not, why, you would give it to him yourself; is that right? A. That is correct.

Q. Did the board of directors approve the agreement? A. I never even asked them.

Q. You don't know whether they did or didn't then? A. No, I don't.

Q. Now, with reference to this agreement did you ever tell him that, "Here, you are going to get seventy-five dollars a month now in cash, and that is in place of your stock"?

A. Definitely not, but he——

Q. You never told him that?

A. He did that himself.

Q. Pardon me?

A. He did that himself.

Q. He drew the seventy-five dollars?

A. That is right.

Q. But you never told him, "Now, you are getting seventy-five [39] dollars. That is in place of the stock"?

A. No. We never discussed it.

Q. You never said that at all?

A. No; I never did.

(Testimony of Waso Sivin Pekovich.)

Q. Now, what is the present value of a share of stock in Admiralty Alaska Gold Mining Company?

A. Around sixty cents, I would say.

Q. Around sixty cents?

A. It is fluctuating back and forth.

Q. Actually, haven't the recent sales been for over seventy cents a share?

A. Oh, yes. Over ninety, over a dollar, not recent but last summer sometime.

Q. How many shares of stock are outstanding in Admiralty Alaska Gold Mining Company?

A. A little over six million, I think; six million three hundred thousand.

Q. And how many do you have yourself?

A. Well, that is my personal. I have nothing to do with it. I have enough to pay.

Mr. McLean: Your Honor, I can't see that this is a material question in this case.

The Court: I don't think it makes any difference how much stock he has.

Mr. Boochever: I think, your Honor, it shows a [40] little bit of Mr. Pekovich's—what he was doing at the time that he hired Mr. Coughlin. If he had thousands of shares, he could well afford to make this type of agreement, and it would be in addition to the salary. If he had five thousand shares himself, he wouldn't be apt to do it.

The Court: No. I don't think it makes any difference, Mr. Boochever. If I have a million shares of Ford Motor Company and am general manager of the Ford Motor Company, I couldn't do a thing

(Testimony of Waso Sivin Pekovich.)

as a shareholder that I couldn't do as general manager. It doesn't matter how much shares you have. His authority as general manager is what counts.

Mr. Boochever: Well, of course, this agreement was both as general manager and as an individual, as I understand the agreement, and that is my point.

The Court: Well, that is why I want to see the records, because, if you are going to hold the company, they have to approve that.

Mr. Boochever: That is right.

Q. (By Mr. Boochever): Now, who suggested that this agreement be in writing that is here, Mr. Pekovich?

A. All of my verbal agreements I reduced in writing as soon as I possibly can after it takes effect.

Q. In other words, all your verbal agreements have been reduced to writing so there is a record of them; is that right? [41]

A. If they are of any essential value; yes.

Q. And, therefore, you reduced to writing this agreement with Mr. Coughlin?

A. That is correct.

Q. But when you changed the agreement, or you say it was changed, you didn't reduce that to writing, did you?

A. I didn't change it. He changed it himself.

Q. He changed it?

A. That was given to him in lieu of salary, but



(Testimony of Waso Sivin Pekovich.)

it was entirely up to him which one to take, but we didn't have no money to take.

Q. Where does it say in the agreement, Mr. Pekovich, that it was in lieu of salary?

A. Where does it say that? Why, it is as specifically as I could explain it. It is there, what it was for.

Q. Well, there is nothing in the agreement that says it is in lieu of salary, is there?

A. But does it say that is in addition to?

Q. I am asking you if there is anything in the agreement that says it is in place of salary?

A. No.

Q. All right. Now, it is your contention that this agreement was changed, is that right, after you came back from this trip to New York?

A. Bob, after we get the money—I was still in New York—— [42]

Q. Yes. He drew a salary?

A. He took a salary.

Q. That is right. While you were still in New York?      A. That is right.

Q. But did you come back and say, “Now, here, why are you drawing a salary when I have agreed to give you four thousand shares of stock”? Did you say that?

A. No, I didn't, because the stock was in lieu of money because they didn't have no money.

Q. Did you say then, “Well, give me back this agreement then now that you are drawing salary?”



(Testimony of Waso Sivin Pekovich.)

A. No, I didn't. He was my friend, and I wouldn't ask him for an agreement even now.

Q. Well, you gave him a written agreement just in case one of you should die or something of that nature, didn't you?      A. That is right.

Q. Well, then, didn't you think it was equally important, if you changed the agreement, to get it back?

A. No, not necessarily, between a friend.

Q. Well, as a matter of fact, you know, don't you, that Bob at all times thought he was going to get that four thousand shares over and above his salary?

A. I know that Bob would never have asked for it, because he didn't during his lifetime. [43]

Q. Are you aware of the fact that he wrote to the Securities Exchange Commission about getting those shares long after this occurred?

A. He still had at that time, he still had, that promissory note for the stock, and he wrote to qualify himself as a director.

Q. Didn't he write——

A. And I wasn't there when he wrote anything about it, but I know there was a lot of writing.

Q. Don't you know that he wrote the Securities Exchange Commission in November of 1954, asking them about when they could release five thousand shares to him, the one thousand that he had been given when he was vice-president and the four thousand that you agreed to give him when he took the job of bookkeeper?      A. In 1953?

(Testimony of Waso Sivin Pekovich.)

Q. In November, 1954?

A. No, I don't.

Q. You don't know that?

A. No, I don't.

Q. I will show you a letter from the Securities & Exchange Commission and ask you if this refreshes——

A. I have seen a good many of them.

Q. Take a look at that and see if it refreshes your memory as to whether Bob in November, 1954, Mr. Coughlin, [44] thought he was going to get those shares?

A. They wrote the letters to all the stockholders and officers and directors. They wrote me lots of them to.

Q. All right. But doesn't that letter show that Bob, Mr. Coughlin, thought he was to get five thousand shares in November, 1954?

A. I don't know if it does or not.

Q. Well, would you read it please and then tell me?

A. Well, you read it. You can read it better.

Mr. McLean: Well, I am going to object, your Honor, on the grounds that the question calls for a conclusion on the part of this witness as to what somebody thought. The letter itself is obviously inadmissible, and I don't believe that the cross-examination should be pressed on that point.

Mr. Boochever: Well, your Honor, I am trying to refresh the witness' memory here as to something that happened in 1954.

(Testimony of Waso Sivin Pekovich.)

The Court: Well, you are trying to refresh his recollection, however, with a letter that wasn't written by him or to him.

Mr. Boochever: Well, your Honor, the man's recollection, my understanding of the law, could be refreshed by anything, a newspaper article or anything at all, and, if it refreshes his recollection, that is all that is necessary. It isn't that he refresh—that the instrument used to refresh [45] the recollection isn't in evidence itself, but it says anything may be used in that regard.

The Court: Well, apparently, it doesn't refresh his recollection. You asked him what the document said.

Mr. Boochever: Well, I wanted him to read it and then see. He hasn't read it yet.

A. No, I haven't read it. That is definite. But I read a good many of them just like it sent to me and to other stockholders that they referred back to me.

Q. (By Mr. Boochever): About stock that they thought they were to get?

A. No. About the Security & Exchange investigation and trouble. That is why the stock dropped down.

Q. Well, I would like you to read this letter.

A. You read it to me. You can read better than I can.

The Court: Well, I don't want to hear it.

Q. (By Mr. Boochever): So, you read it yourself and then——

The Court: If it refreshes your recollection,

(Testimony of Waso Sivin Pekovich.)

then you can testify as to whatever it recalls to your mind, but, if it doesn't, why, you don't have to; but you read it to yourself.

Q. (By Mr. Boochever): Now, doesn't that refresh your recollection that in November, 1954, Mr. Coughlin thought he was to get five thousand shares of stock?

Mr. McLean: The objection goes, your Honor, as to [46] what Mr. Coughlin thought. It certainly was never discussed with this witness. It is just a conclusion that the plaintiff's counsel——

The Court: I don't think he can testify as to what Mr. Coughlin thought in this connection any more than he could in the other.

Q. (By Mr. Boochever): Didn't Mr. Coughlin speak to you about this matter, about wanting to get the five thousand shares of stock, Mr. Pekovich?

A. No, he did not.

Q. You don't recall that?

A. I recall a letter that I gave him, one thousand shares I gave him. At that time he could have, and I would say yes.

Q. But as to the other four thousand you have no recollection?

A. Not since the time I gave him that letter.

Q. And this of course, in November, 1954, was after you gave him the letter, wasn't it?

A. Yes. A lot of troubles; trouble started before then, in November, 1953, I think.

Q. So, you don't have any recollection of that and wouldn't know why the S.E.C. would be writing



(Testimony of Waso Sivin Pekovich.)

to him in that regard?           A. No, I don't. [47]

Q. No. Now——

A. They said that he had a beneficial there, so I don't understand that beneficial, except insinuating.

Q. That he had an interest from an agreement that you would give him the stock; isn't that right?

A. Beneficial interest.

Q. Isn't that a beneficial interest from you to give him the stock?

A. No, not necessarily. He could hold that beneficial interest from somebody else; but I am not denying that he had my letter; that is correct.

Q. Now, Mr. Pekovich, Mr. Roden is the president of the corporation; is that right?

A. Yes; he is.

Q. And you have written to him about this matter, have you not?           A. To Mr. Roden?

Q. Yes.

A. No, I didn't, that I recollect.

Q. You don't remember that?

A. Maybe I did, but I don't remember it

Q. Isn't it true that you wrote him a letter and that you at no time stated that the seventy-five dollars was in lieu of the four thousand shares?

A. That could be absolutely possible, because—— [48]

Q. That could be possible?

A. Oh, yes; it could be possible because the stock was given as full satisfaction.

Q. Pardon me? What was the last part of that?



(Testimony of Waso Sivin Pekovich.)

A. I said, the amount of stock that was given to him, that was to be complete remuneration for doing that work as stated in that note.

Q. Now, isn't it true that you discussed this with Mr. Roden and that you wrote to Mr. Roden and you never suggested that the stock was not an additional inducement over and above the seventy-five dollars a month?

A. I don't remember ever writing to Mr. Roden, but I probably did talk to him and tell him that I gave Bob four thousand shares for compensation because we didn't have any money.

Q. I will show you what purports to be a letter to Mr. Roden and ask you if you recognize the handwriting on that?

A. Yes; that is my handwriting.

Q. All right. Do you want to read that letter to the Court please?

Mr. McLean: I think, your Honor, that the witness should read it and determine the contents of it before it becomes a part of any evidence.

The Court: If he identifies it, it should be [49] introduced in the regular way, accordingly.

Mr. Boochever: Very well.

A. Yes.

Q. (By Mr. Boochever): That is your letter, isn't it? A. Yes. Do you want to read it?

Mr. McLean: May I see it?

Mr. Boochever: Yes (handing document to counsel for defendant).

Mr. McLean: Your Honor, I don't think this is

(Testimony of Waso Sivin Pekovich.)

admissible evidence. Certainly, the letter itself has no date. It is recognized by the witness, but I don't think it is timely. Perhaps, upon cross the plaintiff's attorney may want to bring out additional information, but by itself it is only an inquiry from one officer of the company to the other and much in the nature of a confidential or privileged document.

The Court: Of course, if it has no bearing on this case; but, if it has, I should think, as between an officer of the company and the general manager, the communication, having to do with any phase of this case that is before the Court, would be admissible.

Mr. McLean: I think it is a privileged document between the general manager and the president of the company as to a particular problem, and it is identified by this witness as a letter he wrote to Mr. Roden, all right, but I [50] don't think in itself it is admissible, and I would want to object on that ground, but I think the Court, however, should see the letter and determine its admissibility, all right, but I do want to assert an objection because I don't think it is material to the case and it is a privileged document between the two officers of the company and——

The Court: May I see it? Will you have it marked for identification?

Mr. Boochever: May I address myself to counsel's argument a minute on the privilege. There is no privilege I am ever aware of between officers of

(Testimony of Waso Sivin Pekovich.)

the corporation. I believe there is a doctor and client privilege and similar ones, but I don't believe there is any between directors or officers.

Mr. McLean: I would also want to remind the Court that the president of this company is an attorney, and no doubt he was seeking an attorney's advice on the matter too, and on the grounds that the document can reasonably be inferred to read a legal problem and a discussion of possible settlement or compromise, which in itself is not admissible.

The Court: Well, that of course is not admissible.

Mr. Boochever: No; there is nothing about settlement or compromise in it.

The Clerk: I have marked the exhibit Plaintiff's Exhibit 3 for Identification. [51]

The Court: (Reading the exhibit to himself) It may be received.

The Clerk: That will be No. 3 in Evidence then, Plaintiff's Exhibit No. 3.



ADMIRALTY ALASKA GOLD MINING CO.

MINE OFFICE FUNTER BAY

GENERAL OFFICE: BOX 529, JUNEAU, ALASKA

MARKED FOR  
IDENTIFICATION

EXHIBIT NO. 3

EXHIBIT NO. 3  
RECEIVED IN EVIDENCE

APR 2 1957

IN CAUSE NO. 7605-4

by W. L. L. L. Clerk

by W. L. L. L. Deputy

Mr. Henry Raden.  
President R H & Co  
Dear Mr. Raden.

Referring to the note I had given to Bob dated Feb. 6-54. in respect to the four thousand shares of the above Co. the note is very plain the stock has been promised in consideration of the work to be performed from the Books. it shows that Bob was receiving cash monthly compensation. The Books also show that he had drawn by cks. considerably more than the \$75<sup>00</sup> per month which was paid to Mr. C. J. Chandraich aside from that the Books also show considerable payments by the Company & cks. for which so far I was told by Bill Rauld. not find anything to offset it if under the circumstances Bob is entitled to stock he sure would want to square up his accounts. 1st.

The stock can not be delivered before it is registered with the S.E.C. and that was known and agreed to by Bob. because he was coming on all the correspondence.

very truly yours  
W. L. L. L.





(Testimony of Waso Sivin Pekovich.)

Q. (By Mr. Boochever): Mr. Pekovich, do you know about when this letter was written?

A. No, I don't. I didn't even notice the date on it.

Q. It isn't dated. It was written after the death of Mr. Coughlin, wasn't it? You can tell that by the contents of the letter, can't you?

A. I didn't even read the contents.

Q. All right. Will you look it over please?

A. What are you trying to make of that?

Q. I am asking you—was this written after the death of Mr. Coughlin?

A. I couldn't tell you.

Q. Doesn't it refer to the fact that there is a claim for this four thousand shares; isn't that what this letter is about? A. Yes.

Q. All right. Then, is it your contention it was written before Mr. Coughlin's death?

A. I couldn't tell you.

Q. You don't know whether it was written before his death?

A. No; I don't know whether it was before or after. It [52] could be written any time.

Q. Now, at no place in this letter do you state that he was not entitled to the four thousand shares because he got seventy-five dollars a month salary, do you?

A. No; but I did say that in lieu of that stock he was receiving seventy-five dollars a month.

Q. Will you show me where you say in lieu of the shares he was receiving?

(Testimony of Waso Sivin Pekovich.)

A. I don't say in lieu but it says the book-keeper——

The Court: I think the document plainly speaks for itself.

Q. (By Mr. Boochever): Now, if you thought he was receiving seventy-five dollars in place of the stock, why didn't you tell Mr. Roden in that letter?

A. I did, as I understand it.

Mr. Boochever: Well, I think the letter speaks for itself in that regard. A. That is right.

Q. (By Mr. Boochever): Have you ever been convicted of a crime, Mr. Pekovich?

A. Yes, I have.

Mr. McLean: Well, I object, your Honor, to any further examination on that line. This isn't a criminal case.

Mr. Boochever: I am not making any further examination on it. [53]

Mr. McLean: I object to it and move that the question be stricken and the answer as well for it has no bearing on this case.

Mr. Boochever: Well, our statute permits that as a regular impeachment of any witness. It is in our Code, that the question may be asked.

Mr. McLean: I believe it is primarily on a criminal matter, your Honor, and not on a civil case.

The Court: Well, let's see what the Code says. I have learned some law here this morning. Maybe I can learn more. This Code provides a lot of things.

(Testimony of Waso Sivin Pekovich.)

Mr. Boochever: Section 58-4-61, your Honor, is the section on it.

The Court: -4-61?

Mr. Boochever: Yes, your Honor.

The Court: "A witness may be impeached by the party against whom he was called, by a contradictory evidence, or by evidence that his general reputation for truth is bad, or that his moral character is such as to render him unworthy of belief, but not by evidence of particular wrongful acts; except that it may be shown by the examination of the witness or the record of the judgment that he has been convicted of a crime."

I think on the basis of impeaching a witness that the evidence may stand. [54]

Mr. Boochever: No further cross-examination.

### Redirect Examination

By Mr. McLean:

Q. Mr. Pekovich, one question. At the time you and Mr. Coughlin discussed the four thousand shares of stock and at the time you wrote the letter, do you know whether Mr. Coughlin would have taken the job as secretary-treasurer without that?

A. You mean that I wrote that note?

Q. Yes.

A. Yes; we discussed it. During the month of January when we know that Mr. Ehrendreich was to resign, so to speak, we discussed that so that the office wouldn't be vacant.

Q. Would he have taken the job of secretary-

(Testimony of Waso Sivin Pekovich.)

treasurer without a promise of four thousand shares?

A. I think he would have because he was vice-president already and he would have because he——

Mr. Boochever: I must object to that, as to what he would have done. It is just pure conjecture.

The Court: It is argument also. I will sustain the objection.

Mr. McLean: No further redirect.

The Court: Anything further, Mr. Boochever?

Mr. Boochever: No, your Honor. [55]

The Court: You may step down. Call your next witness.

(Witness excused.)

### WILLIAM S. DAPCEVICH

called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. McLean:

Q. Give us your name, Mr. Dapceovich.

A. William S. Dapceovich.

Q. Where do you live, Mr. Dapceovich?

A. 302-5th Street, 5th and Franklin.

Q. In Juneau? A. In Juneau.

Q. Do you have a position in the Alaska Admiralty Gold Mining Company now?

A. I do.

Q. What is that position?

A. Secretary-treasurer.



(Testimony of William S. Dapceovich.)

Q. How long have you held it?

A. Since October of 1955.

Q. Was that shortly after the time, to your knowledge, that Mr. Coughlin passed away?

A. Yes, it is.

Q. In other words, you have been the secretary-treasurer [56] since Mr. Coughlin; is that right?

A. Yes.

Q. In your position as secretary-treasurer I assume that you have full control of the books and full knowledge working with them; is that right?

A. I do.

Q. Did you have occasion prior to the time you were appointed secretary-treasurer to go back into the books and determine what monies may have been drawn down by Mr. Coughlin?

A. Yes, I did.

Q. Did you make a list of the payments that Mr. Coughlin drew during the period February, 1954, up until the time you became secretary-treasurer?

A. I did.

Q. I hand you this document. Do you recognize it?

A. Yes, I do.

Q. Is that your signature?

A. It is.

Q. What is that, Mr. Dapceovich?

A. It is a statement of salary that was paid to Mr. Coughlin during the time of his employment with the Admiralty Alaska Gold Mining Company.

Q. And in one column I see you—before I ask that question—strike it, please. [57]

Mr. McLean: I would like to introduce this document as Defendants' Exhibit No. A and mark it for identification.

(Testimony of William S. Dapceovich.)

Mr. Boochever: I would like to examine it, if I may.

Mr. McLean: (Handed document to counsel for the plaintiff.)

Mr. Boochever: I have no objection.

The Court: It may be received.

The Clerk: The exhibit is marked Exhibit A.

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## DEFENDANTS' EXHIBIT A

Admiralty Alaska Gold Mining Co.  
Juneau, Alaska

Mine Office:

Funter Bay, Alaska

Main Office:

Box 2642, Juneau, Alaska

Statement of Salary Paid Robert E. Coughlin, Deceased, During Period of Employment—February, 1954, Through September, 1955, as Secretary-Treasurer With the Admiralty Alaska Gold Mining Co.

Check No.	Date	Purpose	Amount
474	5-28-54	Salary—Feb., Mar., Apr., 1954	\$ 225.00
547	9-28-54	Salary—May, June, July, 1954	220.50
564	11- 4-54	Salary—Aug., Sept., Oct., 1954	220.50
637	1- 7-55	Salary—Nov. & Dec., 1954	147.00
651	2- 3-55	Salary—January, 1955	73.50
663	2-16-55	Salary—February, 1955	73.50
671	2-24-55	Salary—March, 1955	73.50
706	4-11-55	Salary—April, 1955	73.50
739	4-28-55	Salary—May, 1955	73.50
792	6- 8-55	Salary—June, 1955	73.50
821	7-11-55	Salary—July, 1955	73.50
860	8- 9-55	Salary—August, 1955	73.12
882	9- 8-55	Salary—September, 1955	73.12

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Total Salary Paid .....\$1,473.74

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## (Testimony of William S. Dapcevich.)

## Miscellaneous Reimbursements:

415	4- 2-54	Itemized petty purchases	\$ 51.51
629	1-10-55	Postage	40.00
670	2-21-55	Reimbursement—cash advanced to laborer	12.26
815	7- 7-55	Postage	45.00
868	8-16-55	Reimbursement—taxi fare	3.00
			<hr/>
			\$ 151.77
			<hr/>

## ADMIRALTY ALASKA GOLD MINING CO.

By /s/ WILLIAM S. DAPCEVICH,  
Secretary-Treasurer.

Received in evidence April 2, 1957.

Q. (By Mr. McLean): I notice one column is for explanation of the document. Mr. Dapcevich, you have a column entitled "Check No." Is that the number of the voucher that was issued by the company?

A. Yes. It is a combination of the check and voucher number.

Q. And in the next column you show dates. What does that date purport to be?

A. The date of the issuance of the check.

Q. And in the next column you show "Purpose." By "Purpose," where did you get that information?

A. That information was furnished on the check and voucher combination form. The lower portion of the check itself shows the explanation and the purpose for which the check is drawn.

(Testimony of William S. Dapceovich.)

Mr. Boochever: I would like to examine it, if I may.

Mr. McLean: (Handed document to counsel for the plaintiff.)

Mr. Boochever: I have no objection.

The Court: It may be received.

The Clerk: The exhibit is marked Exhibit A.

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## DEFENDANTS' EXHIBIT A

Admiralty Alaska Gold Mining Co.  
Juneau, Alaska

Mine Office:

Funter Bay, Alaska

Main Office:

Box 2642, Juneau, Alaska

Statement of Salary Paid Robert E. Coughlin, Deceased, During Period of Employment—February, 1954, Through September, 1955, as Secretary-Treasurer With the Admiralty Alaska Gold Mining Co.

Check No.	Date	Purpose	Amount
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637	1- 7-55	Salary—Nov. & Dec., 1954	147.00
651	2- 3-55	Salary—January, 1955	73.50
663	2-16-55	Salary—February, 1955	73.50
671	2-24-55	Salary—March, 1955	73.50
706	4-11-55	Salary—April, 1955	73.50
739	4-28-55	Salary—May, 1955	73.50
792	6- 8-55	Salary—June, 1955	73.50
821	7-11-55	Salary—July, 1955	73.50
860	8- 9-55	Salary—August, 1955	73.12
882	9- 8-55	Salary—September, 1955	73.12

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Total Salary Paid .....\$1,473.74

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## (Testimony of William S. Dapcevich.)

## Miscellaneous Reimbursements:

415	4- 2-54	Itemized petty purchases	\$ 51.51
629	1-10-55	Postage	40.00
670	2-21-55	Reimbursement—cash advanced to laborer	12.26
815	7- 7-55	Postage	45.00
868	8-16-55	Reimbursement—taxi fare	3.00
			<hr/>
			\$ 151.77
			<hr/>

## ADMIRALTY ALASKA GOLD MINING CO.

By /s/ WILLIAM S. DAPCEVICH,  
Secretary-Treasurer.

Received in evidence April 2, 1957.

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Q. (By Mr. McLean): I notice one column is for explanation of the document. Mr. Dapcevich, you have a column entitled "Check No." Is that the number of the voucher that was issued by the company?

A. Yes. It is a combination of the check and voucher number.

Q. And in the next column you show dates. What does that date purport to be?

A. The date of the issuance of the check.

Q. And in the next column you show "Purpose." By "Purpose," where did you get that information?

A. That information was furnished on the check and voucher combination form. The lower portion of the check itself shows the explanation and the purpose for which the check is drawn.



(Testimony of William S. Dapceovich.)

Q. Is this the exact wording that shows on the bottom portion [58] of the voucher or check?

A. Yes; I believe it is.

Q. And in the last column, "Amount," what does that purport to be?

A. That is the net amount of the check drawn.

Q. The net amount and the amount, in other words, that was actually received by the person to whom this check was issued; is that right?

A. That is correct.

Q. Were all these—who were all these checks issued to?

A. They were issued to Mr. Coughlin.

Q. Who signed the checks?

A. Mr. Coughlin.

Q. Did anyone else sign them? A. No.

Q. Do you base your testimony now upon your search of the records and your personal knowledge of what you saw on these cancelled checks?

A. I base my testimony on the direct examination of those documents.

Q. And you know of your own personal knowledge that that is what shows on the cancelled checks? A. Yes.

Q. There is no question in your mind about that?

A. There is no question in my mind. [59]

Q. In effect, Mr. Dapceovich, by "Salary," what does that show? I notice the amounts are slightly less than seventy-five dollars for most of the months; seventy-three-fifty, for example; how do

(Testimony of William S. Dapceovich.)

you explain the difference between seventy-three-fifty and what other item might be salary?

A. Well, I used the term "the net amount of the check" because those were salary payments and there were deductions for, I believe for, Social Security.

Q. In other words, the records would show the salary was figured at seventy-five dollars a month and a deduction taken out for Social Security, reducing it to seventy-three-fifty; is that right?

A. That is correct.

Q. With the exception of the one top item. The top item, Mr. Dapceovich, Check No. 474, marked "Salary," dated May 28, 1954, it is for two hundred and twenty-five dollars. You have a notation there that the check shows "Salary—Feb., Mar., Apr., 1954." Does that mean it was all taken out at one time?

A. That is correct.

Q. Farther down in this document, which is Defendants' Exhibit A, you have a column entitled "Miscellaneous Reimbursements." Is that a reimbursement to Mr. Coughlin or to whom? [60]

A. Reimbursements to Mr. Coughlin.

Q. And were they, too, signed by Mr. Coughlin?

A. That is right.

Q. And no one else? A. No one else.

Q. I hand you this document. Can you recognize that?

A. Yes.

Q. What is that?

A. Well, it is a statement of monies that are due the Admiralty Alaska Gold Mining Company for

(Testimony of William S. Dapceovich.)

the reason that is shown on the purpose for which the checks were drawn or for the reason that there wasn't sufficient information with the check to show for what purpose it was drawn.

Mr. McLean: Defendant wishes to introduce this document as its next exhibit, Exhibit No. B, and mark it for identification.

Mr. Boochever: I am going to object to this, your Honor, as irrelevant and not contained in the issues at all, and also it is not the best evidence. If he is going to testify about checks, he should produce the checks. I had no objection to the other, because we recognized that without any question.

Mr. McLean: Rather than make for a bulky record, introducing the checks themselves, your Honor, I believe it [61] is customary for an accountant, who identifies the transactions, to list them on one page, as long as they purport to be money only and no other purpose, that it is customary to introduce them in a summary form, and I feel that this particular matter is not objectionable. It runs to——

The Court: May I see it?

Mr. McLean (Handing document to the Court):——monies paid to the plaintiff's intestate.

The Court: These were checks, did I understand you to testify, on the corporation drawn by Robert E. Coughlin to himself? A. That is correct.

The Court: It may be received.

Mr. Boochever: Well, your Honor, my objection is that the checks themselves are the best evidence of that and the only evidence admissible in evidence

(Testimony of William S. Dapceovich.)

and that this witness can't come in with a list and say, "Here is a list of the checks." He has to produce the checks. They are the best evidence, and, if he produces them, then that is another question, but he hasn't produced them, and he can't come in with just any piece of paper and say, "There is a list of them." That is not the best evidence.

Mr. McLean: Well, your Honor, this witness has some of those records, but, since that isn't too bulky an item, I feel that the witness can get the checks, and we can [62] introduce them.

The Court: Well, all right. Probably it is the best evidence, the checks are.

Mr. McLean: I ask you, Mr. Dapceovich, to step down and to get the checks referred to in that particular exhibit.

Mr. Boochever: And I have a further objection, your Honor, that it is not within the issues of the case. I don't get what the purpose is, unless it is a counterclaim for additional sums of money——

The Court: Well, it could be.

Mr. Boochever: But there is no counterclaim in the case and——

The Court: Well, but there might be and could possibly happen, so, if they have the checks——

Mr. McLean: Your Honor, I only wish to state the reason for it is that counsel for the plaintiff has upon cross-examination brought out other matters which do not directly pertain to the one question which was originally presented to the Court, and, since they are going into that, I feel that this should



(Testimony of William S. Dapceovich.)

be brought out at this time and, if necessary, to amend the complaint, or the answer.

The Court: Well, I think that, if at all possible, the whole controversy should be settled in this litigation. I think there should be an end to litigation. If this Court can possibly get it all within this case, it would. [63]

Mr. McLean: Would you pick out those four checks (addressing the witness)?

This may remove your objection, Mr. Boochever (handed document to counsel for defendants).

Mr. Boochever: Well, I have to see it. Well, your Honor, these show checks in the amount specified, but there is nothing to show the purpose of the check drawn as indicated on this statement, and also this statement says "Statement of monies due the Admiralty Gold Mining Company by Robert Coughlin," which is purely a conclusion of this witness and is not—he can say "A statement of checks," if he wishes to, but it also shows "Purpose check drawn," and there is nothing on these checks showing the purpose, unless you have the vouchers somewhere else which——

A. I have the vouchers.

Mr. Boochever: ——which show that.

Mr. McLean: Do I understand the Court to also want the remainder of the carbon copy of this particular voucher? The witness in his sworn testimony said that this was what was contained on the statement.



(Testimony of William S. Dapceovich.)

The Court: Well, the check is the best evidence, and the voucher is only an explanation, which, I suppose, this document is an explanation. It might satisfy everybody though if you can find the——

Mr. McLean: Do you have those in court with you, [64] the remaining carbon copies of these?

A. No, I don't.

Mr. Boochever: If counsel will show them to me at 1:30, I will waive the objection in regard to the document being the same as stated on there, but I do not think that the explanatory remarks—since, this is tried before the Court, I have no objection to it; I know the Court won't consider that as permissible; but I object to those remarks that are on that paper, your Honor.

Mr. McLean: I have a number of other questions, your Honor, which will take another fifteen minutes of time besides cross-examination.

The Court: I have another matter at 1:30. We will suspend at this time until 2:00 o'clock, this particular case, and Court will recess until 1:30.

(Whereupon, the trial was recessed until 2:00 o'clock p.m., April 2, 1957, and resumed as per recess, with all parties present as heretofore.)

## WILLIAM S. DAPCEVICH

resumed the witness stand:

## Direct Examination

By Mr. McLean:

Q. Mr. Dapceвич, in your capacity as secretary-treasurer of the corporation did you have access to the minutes of previous years, particularly a meeting of February, 1954, and 1955, for this corporation? A. Yes. [65]

Q. I hand you this document. Do you recognize it? A. Yes, I do.

Q. What is that?

A. That is the minutes of the meeting of the Admiralty Alaska Gold Mining Company that was held in Juneau on February 1, 1954.

Mr. McLean: I would like to have the clerk mark this for identification. It is requested, your Honor, that, should counsel for the plaintiff wish these introduced in evidence, we would want to reserve the right to withdraw them at the close of the trial since they are the corporation's minutes.

The Court: Very well; you may have them.

Mr. Boochever: I would have no objection as long as a copy of them is made available to the Court. In fact, I have a copying machine in my office and I will be glad to copy them for counsel if he wishes.

Mr. McLean: Does plaintiff have any objection to the admissibility of these?

Mr. Boochever: I want to see what they are.

(Testimony of William S. Dapceovich.)

The Clerk: They will be Defendants' Exhibit B for Identification.

Mr. Boochever: I have no objection to the minutes of the meeting. I don't think the minutes of the stockholders meeting have any relevancy. I have no objection to them being [66] submitted, but I think we could stipulate to the Court that they have no bearing on the case and prevent the Court from having to look at them, if counsel wishes. I have no objection to it, but I just don't think there is anything material.

Mr. McLean: They were all together, your Honor, so we kept them all together.

Mr. Boochever: We could easily separate them.

Mr. McLean: May it please the Court, I would like to read a portion of this exhibit so that the Court can be apprised of it.

The Court: There is no objection to the exhibit, as I understand it?

Mr. Boochever: No. I have no objection to the minutes being entered.

The Court: It may be received.

The Clerk: It will be admitted then and marked Defendants' Exhibit B.

(Testimony of William S. Dapceovich.)

## DEFENDANTS' EXHIBIT B

### Minutes of Meeting of Admiralty Alaska Gold Mining Company

held at Juneau, Alaska, at 2 p.m., Feb. 1, 1954, and adjourned until 8 p.m., Feb. 1, 1954. Time 8 p.m., Feb. 1, 1954.

Meeting called to order at 8 p.m., Feb. 1, 1954, in the office of C. J. Ehrendreich in the Shattuck Building, Juneau, Alaska.

Present: Henry Roden, W. S. Pekovich, R. E. Coughlin, Mrs. Henry Roden, C. J. Ehrendreich, Mr. Burke Riley and Mrs. Karl Theile.

Stock represented as follows: In person 25,500 shares, by proxy 3,864,782 shares which constitute a quorum.

The Secretary, Mr. Ehrendreich, read Notice of Annual Meeting of Stockholders, to be held Feb. 1, 1954, at 2 p.m. at Juneau, Alaska, for the purpose of electing Directors. The call was dated Dec. 21, 1953, and signed by C. J. Ehrendreich, as Secretary.

Mr. Ehrendreich read in full his Affidavit of mailing Notice, date of mailing and contents were as by law required.

The Secretary read minutes of meeting held 2 p.m., Feb. 4, 1952, adjourned until 7 p.m. same date, which minutes had previously been approved. This



(Testimony of William S. Dapceovich.)

meeting was adjourned to reconvene Feb. 29, 1952, and then further adjourned to meet March 18, 1952. No quorum was present on March 18, 1952, and meeting was further adjourned until March 25, 1952.

Minutes of meeting of March 25, 1952, were read. Mr. Pekovich objected to the wording of the Resolution concerning 600,000 shares of stock which he had received, the Resolution stating that these shares of stock were in full for expenses incurred and Pekovich's stock used by him in furtherance of the company's benefit up to March 22, 1952. Mr. Pekovich stated that the Resolution should state that the 600,000 shares which he received were in part refund only for his stock which he had sold and otherwise disposed of for the interests of Admiralty Alaska Gold Mining Company during the years in which he was in charge of the company.

The Secretary stated that he had written out a Release which he had asked Mr. Pekovich to sign and that he had refused to sign such Release.

Mr. Pekovich stated that he was willing to sign a Release if it were worded properly and suggested the following:

"For and in Consideration of 500,000 shares of stock of Admiralty Alaska Gold Mining Company returned to me and 100,000 shares of said stock I have committed to Norman C. Stinnes, I hereby release Admiralty Alaska Gold Mining Company from any further payment to me or delivery of stock, this being understood to be a refund of part of my personal stock sold and otherwise disposed of for the interest of Admiralty Alaska Gold Min-



(Testimony of William S. Dapceovich.)

ing Company during the years I have been in charge of it, and not as any money consideration."

The Release was unanimously approved by the stockholders represented at this meeting.

Report of the President was read. Report stated that matters concerning the company were progressing nicely and that a full Report would be made in 60 days.

Mr. Ehrendreich moved, Mr. Coughlin seconded, that the Report of the President be approved. The Report was approved unanimously.

Mr. Roden stated that he thought this meeting should be adjourned until more is known of the reports of the Geological Survey and Bureau of Mines.

Mr. Roden suggested that if Mr. Pekovich were going to New York on company business that a new Power of Attorney be prepared for him.

Mr. Roden again stated that he wished to adjourn this meeting.

The Secretary-Treasurer, Mr. Ehrendreich, stated that he had a busy Tax period coming up and that he wished to resign as Secretary-Treasurer, stating that the \$75.00 per month he received was not ample compensation for the amount of work it was necessary for him to perform for the Company. There was no objection to this and Mr. Pekovich suggested that Mr. R. E. Coughlin take over the duties of Secretary-Treasurer, to which there was no objection and Mr. Coughlin expressed his willingness to perform such duties to the best of his ability. Mr.

(Testimony of William S. Dapceovich.)

Ehrendreich stated that he would render Mr. Coughlin as much help as possible and turn over to him the files and records of the company.

Mr. Roden moved that the meeting adjourn until Feb. 15, 1954, unless sooner reconvened by the President. Mr. Coughlin seconded the motion and it carried unanimously.

ADMIRALTY ALASKA GOLD  
MINING COMPANY.

Release

For and in Consideration of 500,000 shares of stock of Admiralty Alaska Gold Mining Company returned to me and 100,000 shares of said stock I have committed to Norman C. Stinnes, I Hereby Release Admiralty Alaska Gold Mining Company from any further payment to me or delivery of stock, this being understood to be a refund of part of my personal stock sold and otherwise disposed of for the interest of Admiralty Alaska Gold Mining Company during the years I have been in charge of it, and not as any money consideration.

Attest:

/s/ ROBERT E. COUGHLIN,  
Secretary-Treasurer.

/s/ W. S. PEKOVICH.

Dated Juneau, Alaska, March 16, 1954.

Received in evidence April 2, 1957.

(Testimony of William S. Dapceovich.)

Mr. McLean: The portion that pertains to this particular matter, your Honor, reads as follows: "The Secretary-Treasurer, Mr. Ehrendreich, stated that he had a busy Tax period coming up and that he wished to resign as Secretary-Treasurer," and then, your Honor, there is a long blank space without punctuation, and it continues to read: "stating that the \$75.00 per month he received was not ample compensation for the amount of work it was necessary for him [67] to perform for the Company. There was no objection to this and Mr. Pekovich suggested that Mr. R. E. Coughlin take over the duties of Secretary-Treasurer, to which there was no objection and Mr. Coughlin expressed his willingness to perform such duties to the best of his ability. Mr. Ehrendreich stated that he would render Mr. Coughlin as much help as possible and turn over to him the files and records of the company."

The portion I wish to call the Court's attention to amounts to two-thirds or three-fourths of the line that is blank, inferring that apparently something is missing, but we don't know what it is.

Mr. Boochever: Well, I think the Court is well able to—counsel is arguing to the Court at this point, it seems to me, when he says "inferring"—

Mr. McLean: I only wish to point that out as being part of the minutes.

The Court: The Court will make note of the blank.

(Testimony of William S. Dapceovich.)

Q. (By Mr. McLean): I hand you this document, Mr. Dapceovich; do you recognize it?

A. Yes, I do.

Q. Would you tell the Court what that is, if you can identify it?

A. It is the minutes of the annual meeting of the stockholders of Admiralty Alaska Gold Mining Company of [68] February 7, 1955.

Q. 1955.

Mr. McLean: The defendant desires that this document be introduced as its next exhibit. Counsel for the plaintiff has seen it. Do you have any objection, or did you want to look at it?

Mr. Boochever: I will just take a moment to look at it. No objection.

The Court: It may be received.

Q. (By Mr. McLean): Mr. Dapceovich, I wish to call your attention to a particular paragraph which reads as follows: "The following stockholders were present in person," and with a column listing the names and another column listing the number of shares. At the bottom of the list of names there is one, Mr. Robert E. Coughlin, and in this report—number of shares, five thousand. Now, from your knowledge of the company's books, Mr. Dapceovich, how many shares did Mr. Coughlin actually have in 1954—this was a year before these minutes?

A. To the best of my knowledge he had one thousand shares.

Q. In 1955 how many shares did he have according to the records of the company?



(Testimony of William S. Dapceovich.)

A. One thousand shares.

Q. To your knowledge, did he ever have any more than one thousand shares? [69]

A. Not to my knowledge; no.

Q. Would you say, Mr. Dapceovich, that five thousand was correct or wrong?

A. I would say it was incorrect.

Q. I believe counsel for the plaintiff also examined some copies of vouchers that went with the checks that we were going to introduce this morning. Do you have the rest of the vouchers here with you, Mr. Dapceovich?

A. Yes, I do.

Q. Would you step down and get them, please?

A. (Stepped down.)

The Clerk: For the record I will say that the minutes of the stockholders meeting, February 5, 1955, are marked Defendants' Exhibit C.

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## DEFENDANTS' EXHIBIT C

### Admiralty Alaska Gold Mining Co.

Minutes of Annual Meeting of Stockholders held at Juneau, Alaska, February seventh, 1955.

The annual meeting of the stockholders of Admiralty Alaska Gold Mining Company was held at the office of the Company in the City of Juneau, Alaska, on the seventh day of February, 1955, at the hour of two o'clock in the afternoon.



(Testimony of William S. Dapcevich.)

Defendants' Exhibit C—(Continued)

After calling the meeting to order the President suggested that an adjournment be taken, due to the press of other business. Upon motion duly made and unanimously adopted the meeting adjourned to seven o'clock p.m. the seventh day of February, 1955.

At seven o'clock p.m. of February seventh, 1955, pursuant to adjournment the meeting was called to order by President Henry Roden. Robert E. Coughlin acting as Secretary.

The following stockholders were present in person :

Name	No. of Shares	
Henry Roden . . . . .	21,000	
Howard D. Stabler . . . . .	1,100	
Burke Riley . . . . .	2,500	
J. Gerald Williams . . . . .	1,000	
W. S. Pekovich . . . . .	1,131,143	
Robert E. Coughlin . . . . .	5,000	1,161,743

---

There being a large number of stockholders who have appointed proxies it is deemed inadvisable to insert their names and on motion duly made and unanimously adopted; it was resolved that the Secretary, having duly compiled said proxies, dispense with the inserting the names of each one of them in lieu thereof insert the names of the proxies and the number of shares represented by each of them. Which is done accordingly.

(Testimony of William S. Dapceovich.)

## Defendants' Exhibit C—(Continued)

Name	No. of Shares
Henry Roden .....	33,420
Robert E. Coughlin .....	65,828
J. Gerald Williams .....	4,250
Directors .....	107,472
W. S. Pekovich .....	1,202,030
	1,413,000
Total .....	2,574,743

It appears that a majority of all stock outstanding is duly represented and in attendance.

The proxies were ordered filed with the minutes of this meeting.

The Secretary presented and read a copy of the Notice of this Meeting together with proof of mailing of the same at least thirty days prior to the meeting to each registered stockholder at his known address as same appears on the books of the corporation.

The minutes of the previous annual meeting of stockholders, held on the First day of February, 1954, were read and on motion duly made were approved, ratified and confirmed.

When the President called for the submission of reports Mr. Pekovich, General Manager, explained that work under the D.M.E.A. is still going on. That the contract under which this is being done will soon come to an end and that upon its completion a full report of the progress made under it will be submitted by him.

(Testimony of William S. Dapcevich.)

Defendants' Exhibit C—(Continued)

Thereupon discussion was had upon the proposed sale of 600,000 of the capital stock of the Company. It appeared that Mr. Pekovich has heretofore made application to the Securities and Exchange Commission in connection with the contemplated sale, but to date no word has been received from the Commission in response to said correspondence.

The President raised the question about fixing the price at which said stock is to be sold, expressing the opinion that the par value thereof (being one dollar per share) should be set as the purchase price in case any of it is offered for sale and sold. Mr. Howard D. Stabler was then requested for a legal opinion on the point raised, to be rendered to the Board of Directors.

Upon motion duly made and unanimously seconded and adopted, the following named persons were duly elected Directors of this Company to serve for the ensuing year and until their successors are elected and qualified. To wit:

Henry Roden, Norman C. Stinnes, Arthur F. Erickson, J. Gerald Williams and Robert E. Coughlin.

Mr. W. S. Pekovich announced that he had advanced sufficient funds to redeem the Six Per Cent Income Notes heretofore held by the Company and in connection therewith had expended the sum of \$. . . . . which he claimed was due him and

(Testimony of William S. Dapceovich.)

Defendants' Exhibit C—(Continued)

should be repaid to him. After some discussion, motion was made by Howard D. Stabler, seconded by J. Gerald Williams that this Company acknowledge its indebtedness in the indicated amount and that proper record thereof be made upon delivery to the Secretary of this Company, all notes paid and redeemed as aforesaid. The motion was carried unanimously.

No further business to come before the meeting it was adjourned, to reconvene at the call of the President.

/s/ HENRY RODEN,  
President.

Attest.

.....,  
Secretary.

Received in evidence April 2, 1957.

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A. (Resumed the witness stand.)

Q. Would you produce Vouchers 682, 693, 757 and 770?      A. (Produced documents.)

Mr. McLean: I would like to have them marked for identification and, subject to objection, I would like to introduce them.

Mr. Boochever: No objection, save my previous objection as to the relevancy of those checks and vouchers.



(Testimony of William S. Dapceovich.)

Q. (By Mr. McLean): There are four payments, Mr. Dapceovich—one in the amount of two hundred dollars; one hundred dollars; another one hundred dollars; and three hundred [70] and fifty. Were any of these drafts or vouchers in payment of salary? A. No; they were not.

Q. Are these true copies as were originally issued by the company?

A. They must be. They are prenumbered. And, for example, this one here still contains a carbon signature of Mr. Coughlin, and so does this one.

Q. Were the original of these all signed by Mr. Coughlin? A. Yes, they were.

Mr. McLean: Four copies together as one exhibit.

The Clerk: That will be Exhibit D.

Q. (By Mr. McLean): Mr. Dapceovich, since you took over as secretary-treasurer from Mr. Coughlin, would you tell the Court what condition you found the books of the company in?

Mr. Boochever: I object to that as irrelevant, immaterial and incompetent.

Mr. McLean: I think it is entirely in order, your Honor, since the plaintiff's case rests entirely upon the duties of the secretary-treasurer, and it has been presumed on the part of the plaintiff that he actually performed these duties. No contest is being made, but there would be a question, however, as to whether he did actually follow through and perform the services. [71]

Mr. Boochever: Well, your Honor, that is ad-

(Testimony of William S. Dapceovich.)

mitted in Paragraph 4 of the answer and affirmative defense. The defendants stated they "Admit that said Robert E. Coughlin performed services as alleged," and we of course didn't come here prepared to argue about that since they admit it, and they can't now bring in evidence in opposition to their pleadings on that.

The Court: I think that is correct, Mr. McLean. Objection will be sustained.

Q. (By Mr. McLean): What salary, Mr. Dapceovich, did you receive when you took over as secretary-treasurer?

Mr. Boochever: I object to that as being immaterial, irrelevant and incompetent.

The Court: Objection is overruled.

A. I received seventy-five dollars a month for a period of, I believe, eight or nine months, and after that I received an increase in salary due to the amount of work that I had to perform.

Q. (By Mr. McLean): Did you do any work on matters connected with the D.M.E.A.?

A. Yes, I did.

Q. Would you tell the Court approximately how much of your time was spent doing D.M.E.A. work?

A. Well, I would have to go back again to the time of Mr. Coughlin's employment because I had to go back and [72] complete his work, so I, as a result, had to do quite a bit of the D.M.E.A. work as far as the books were concerned.

Q. When was the D.M.E.A. work completed

(Testimony of William S. Dapceovich.)

as far as the actual Government advances were concerned?

A. To the best of my knowledge it was the first part of 1955. I should say—yes; 1955.

Q. Now, as secretary-treasurer of the company, Mr. Dapceovich, did you have occasion to look back in the books to determine when the D.M.E.A. work first started?

A. Yes, I did on occasion. In preparing financial statements it was necessary for me to go back to Mr. Ehrendreich's work, because that was the last time that a complete financial statement had been prepared.

Q. Did you notice whether any D.M.E.A. work was done by Mr. Ehrendreich?           A. Yes.

Q. Could you tell the Court approximately how much, from your work and observation of the books?

A. I couldn't tell that without further study into the records, as to the exact amount.

Q. Now, Mr. Dapceovich, was this a full-time job for you, or a part-time, or just what was the understanding when you took over this work?

A. Part-time. [73]

Q. What is your regular occupation?

A. I am a voucher-examining supervisor with the Alaska Native Service.

Q. Is that accounting work that you do there?

A. Yes.

Q. In other words, you are by profession an accountant, is that it, or work on accounting?

(Testimony of William S. Dapceovich.)

A. Well, I have had—all my experience has been in the line of accounting. I wouldn't say—well, of course, I am not a certified public accountant, but all my training has been in bookkeeping and accounting and voucher-examining work.

Q. How many years have you been engaged in this work?      A. Eleven years.

Q. Along with the salary of seventy-five dollars a month that you received was any other facility or office or something of that nature furnished?

A. Yes. The Admiralty Alaska Gold Mining Company furnished the office space and all the facilities. I worked right in the office.

Mr. McLean: No further direct.

### Cross-Examination

By Mr. Boochever:

Q. What is the salary you got due to that increased work, [74] Mr. Dapceovich?

A. One hundred and twenty-five dollars a month.

Q. And, now, who hired you?

A. The board of directors.

Q. Did the whole board, or who consulted you and asked you to take the job?

A. Mr. Pekovich.

Q. Who set your salary?

A. The salary was to my knowledge prescribed by—it was set up as a precedent, I believe. All the previous secretary-treasurers have received that like salary.



(Testimony of William S. Dapeevich.)

Q. And who authorized your increase from seventy-five to one hundred and twenty-five?

A. That was authorized by, I believe that was authorized by, Mr. Pekovich and Mr. Roden, I believe.

Q. There was no board of directors meeting about that, was there? A. No; there wasn't.

Q. Now, who gives you your instructions in regard to your work?

A. My instructions—I am, as far as the book-keeping is concerned, I am on my own, but the instructions would come from Mr. Pekovich and the board of directors.

Q. Well, actually, the board of directors doesn't ever meet and give you instructions, do they? Have they ever done [75] that? A. No; they do not.

Q. So, Mr. Pekovich gives you the instructions, doesn't he?

A. Well, I don't know the exact nature of your question. I don't understand it. Instructions on what?

Q. Upon what work you should do, and so forth, and what reports you should fill, and turns matters over to you and says, "Will you take care of this, please, Bill," and that kind of stuff?

A. Well, yes.

Q. It is Mr. Pekovich who does that; isn't that correct?

A. Well, that is right; except that I want to correct it to this extent. The bookkeeping and so forth,

(Testimony of William S. Dapceovich.)

of course, all the phase of that work, wouldn't come under his supervision or direction.

Q. Who else supervises it and directs it?

A. That more or less speaks for itself. You know what you are supposed to do.

Q. In other words, you just do it yourself; is that right? A. That is right.

Q. And, as far as anyone giving you instructions, it is Mr. Pekovich?

A. Yes; as far as the operation of the office.

Q. He is the principal person concerned with this corporation, isn't he? [76]

A. That is correct.

Q. Now, with reference to this entry in the 1955 minutes of the meeting where it shows "Robert E. Coughlin—5,000 shares," you stated that actually on the stock books he only shows one thousand shares; is that right; that is all that was ever issued to him?

A. That is correct to the best of my knowledge.

Q. Then, would the only other explanation for the additional four thousand be some kind of agreement to give him four thousand shares more?

A. Well, I don't know about that.

Mr. Boochever: No further questions.

(Testimony of William S. Dapceovich.)

Redirect Examination

By Mr. McLean:

Q. Mr. Dapceovich, Mr. Boochever asked you about an increase in your salary in recent months. Would you tell the Court whether or not there has been any corresponding increase in the size and structure of the company's operations and your duties? A. Yes; I would say definitely yes.

Q. Is that something fairly recent or since you have taken over?

A. Since I took over and that, in addition to the fact that, there was so much work involved in bringing the accounts [77] up to date. What was supposed to originally be just a part-time job, a couple of nights or evenings, worked out that a lot more time had to be spent on the job, practically every night of the week plus the week ends.

Q. Do you have any idea, Mr. Dapceovich, how much money you were handling in the conduct of your work as secretary-treasurer here in recent months?

A. I couldn't recollect that exact figure.

Mr. McLean: No further redirect.

(Testimony of William S. Dapceovich.)

### Recross-Examination

By Mr. Boochever:

Q. Mr. Dapceovich, when did you say the D.M.E.A. work terminated?

A. I believe that was the first part of 1955, to the best of my recollection.

Q. Well, there was certainly more work when they had the D.M.E.A. than when they didn't have it, wasn't there?

A. Well, accounting-wise, I don't know that there would be.

Q. But report-wise and letter-wise and so forth, there certainly would be, wouldn't there?

A. Well, yes.

Mr. Boochever: That is all. [78]

### Redirect Examination

By Mr. McLean:

Q. And you did a considerable amount of that D.M.E.A. work even after 1955 when you took over, didn't you?

A. Not directly, except going back, and to prepare financial statements I had to retrace all the D.M.E.A. work and payments.

Mr. McLean: That is all.

Mr. Boochever: No further questions.

The Court: You may step down.

(Witness excused.)



Mr. McLean: Your Honor, at this time we wish to introduce a certified copy of the Inventory and Appraisement which was filed in the Estate of Robert E. Coughlin, the certificate of Henry C. Leege, United States Commissioner. It would be a matter of judicial notice. Unless counsel has some objection, I would like to have the document entered and made a matter of record.

Mr. Boochever: I don't see any relevancy to it, your Honor, and I object to it for that reason, that it is immaterial, irrelevant and incompetent.

The Court: What is the purpose?

Mr. McLean: To point out, your Honor, that the Estate of Robert E. Coughlin listed an interest in Admiralty Alaska Gold Mining Company, one thousand shares, value four [79] hundred dollars.

Mr. Boochever: Well, your Honor, that is not in issue. It is admitted that all we had was one thousand shares, and we had this agreement which Mr. Pekovich refused to admit and refused to agree to, and so that is the only thing in the Inventory and Appraisement, but it has no bearing on the case.

Mr. McLean: I believe it does, your Honor, since counsel for the plaintiff is relying heavily upon the minutes of the company, wherein the said Robert E. Coughlin listed, when he wrote the minutes, five thousand shares of stock for himself. In other words, the credibility, so to speak, and veracity of Robert E. Coughlin is at stake here now, and it is necessary to know, at least as a matter of record, how many shares he did actually have.

Mr. Boochever. Well, your Honor, I don't see

how what the Inventory and Appraisement, made after his death, can affect the credit and veracity of Robert E. Coughlin. If it was an admission of his, it might have some possible bearing. But I have no objection, actually, to its going in. It is a trial before the Court, and I am sure the Court can give it what weight it is entitled to, but I think I should certainly point out that it has no bearing whatsoever when all it shows is the actual shares that were in the possession of the administrator, and that is all it shows.

The Court: In view of the statement in the minutes [80] that one year he had a thousand shares and the next year five thousand shares, although it has been testified to that was in error, I think that this would be a verification of the fact that that was in error, and I will receive it for what purpose, whatever worth it may have in the matter. It may be received.

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### DEFENDANTS' EXHIBIT E

United States of America,  
Territory of Alaska, Division No. 1—ss.

I the undersigned, United States Commissioner for the Juneau Precinct, Territory of Alaska, Division No. One, do hereby Certify that the hereto attached is a full, true and correct copy of the original Inventory and Appraisement in the Matter of the Last Will and Testament and Estate of Robert E. Coughlin, Deceased, being Probate Case No. 1988, on file and of record in my office.

Defendants' Exhibit E—(Continued)

In Testimony Whereof, I have hereto subscribed my name and affixed my official seal at Juneau, Alaska, this 20 day of February, 1957.

[Seal]        /s/ H. C. LEEGE,  
                                 U. S. Commissioner,  
                                 Juneau, Precinct.

Defts' Exhibit No. E.

Received in Evidence April 2, 1957.

(Copy)

In the Probate Court for the Territory of Alaska,  
First Division, Juneau Precinct

Probate No. 1988

In the Matter of:

The Last Will and Testament and Estate of Robert  
E. Coughlin, Deceased.

INVENTORY AND APPRAISEMENT

Personal Property:

Cash in B. M. Behrends Bank, Juneau . . . .	\$2,171.50
Partnership interest in vessel Forester . . . .	3,500.00
Alaska Mutual Benefit Association insur-	
ance policy . . . . .	1,000.00
Interest in Snettisham mining claims,	
Magnetite Nos. 1 to 18, on Snettisham	
Peninsula . . . . .	1,000.00

## Defendants' Exhibit E—(Continued)

Admiralty Alaska Gold Mining Co., 1,000 shares .....	400.00
Alaska Empire Gold Mining Co., 5,000 shares .....	1.00
Jack White Mining Co., 100 shares .....	30.00
Admiralty Island Coal Co., 55 shares .....	1.00
Livingood Cinnobar Corp., 20,000 shares ..	1.00
International Highway Gold Mining & Exploration Co., 200 shares .....	No value
Lucky Chance Gold Mining Co., 250 shares	No value
United Western Mines, Inc., 1,000 shares..	No value
Interest in estate of Laura Gamble and James Arthur Gamble .....	1,000.00

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Total Personal property .....\$9,104.50

## Real Property:

That certain property known as 119 Seventh Street, Juneau, Alaska, and more particularly described as follows, to wit:

Commencing at Corner No. 1, whence the southwest corner of Government Lot, Block 19, being the corner made at the intersection of Main and Fifth Street bears S. 57 deg. 44 min. W. 55.3 feet and S. 41 deg. 23 min. E. 544.7 feet. Courses determined by taking the direction from the corner of the Government Lot in Block 19, made at the intersection of Main and Fourth Street to the said southwest corner of the Government Lot as N.



Defendants' Exhibit E—(Continued)

41 deg. 17 min. W. Starting at said Corner No. 1, thence N. 71 deg. 22 min. E. 41.4 feet to Corner No. 2, and iron pipe driven in the ground at the corner of the present fence; thence S. 25 deg. 52 min. E. 56.0 feet to Corner No. 4, an iron bar driven in the ground at the corner of the present fence; thence S. 59 deg. 40 min. W. 57.9 feet to Corner No. 5, an iron pipe driven in the ground at the corner of the present fence; thence N. 37 deg. 42 min. W. 86.0 feet to Corner No. 1, an iron pipe driven in the ground at the corner of the fence, which tract contains 4,871 sq. ft., more or less; together with the tenements and appurtenances thereunto belonging; except a strip 8.0 feet wide running along the boundary formed by a line drawn from Corner No. 4 to Corner No. 5, and a perpetual easement and right-of-way granted over a strip of ground 8 ft. wide along the boundary formed by running a line from Corner No. 3 to No. 4, and except a perpetual easement and right-of-way over and upon a triangular piece of ground at the corner of the intersection of said right-of-way hereinabove described and the 8 ft. strip hereinbefore conveyed. The base and altitude of said triangular strip being 8 feet on each line from said corner . . . . . \$12,000.00

Defendants' Exhibit E—(Continued)

That certain property formerly located in the Township Thirty-two South of now located in the Haines Recording Precinct, particularly described as follows, to wit:

Lots One and Two of Section Eighteen in the Township Thirty-two South of Range Sixty East, and the Lots Two and Three, the North half of the Southeast quarter, and the southwest quarter of the northeast quarter of Section Thirteen in Township Thirty-two South of Range Fifty-nine East of the Copper River Meridian, Alaska, containing 240.52 acres, according to the official plat of the survey of said land on file in the General Land Office, which said land was patented to Joseph Curry by the United States of America on June 18, 1925, Patent No. 961879; together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining .....		\$250.00
Total real property .....		\$12,250.00
Grand Total .....		\$21,354.50

Defendants' Exhibit E—(Continued)

We, the undersigned, having been appointed appraisers of the above-entitled estate, have examined and appraised all of the property of said estate which has been exhibited to us and of which we have any knowledge, and we have appraised the various items as above set forth at their true and fair market value.

W. H. BARRINGTON, JR.,  
HENRY RODEN,  
E. L. HUNTER.

United States of America,  
Territory of Alaska—ss.

I, Minnie Coughlin, executrix of the above-entitled estate, being first duly sworn according to law, depose and say:

That the foregoing is a fair and true inventory and appraisal of all of the assets of the estate of Robert E. Coughlin, deceased, which have come into my hands and of which I have any knowledge.

MINNIE COUGHLIN.

Subscribed and sworn to before me this 2nd day of August, 1956.

[Seal]                      R. BOOCHEVER,  
Notary Public for Alaska.

My Commission expires: Nov. 10, 1959.

Received in evidence April 2, 1957.

Mr. McLean: Your Honor, at this time I would like to prevail upon the Court for another short recess. One of my witnesses, the next witness I have in mind, just returned to town, and I haven't had a chance to consult with him on some of the details of the case and I would very much like to speak with him for five minutes before producing him.

The Court: I think any attorney is entitled to talk with a witness and not put him on blindly. We will take a ten-minute recess.

(Whereupon, Court recessed for ten minutes, reconvening as per recess, with all parties present as heretofore; whereupon the trial proceeded as follows:)

Mr. McLean: Your Honor, at this time the defense will rest. [81]

### Plaintiff's Rebuttal

#### C. J. EHRENDREICH

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Boochever:

Q. What is your name, please?

A. C. J. Ehrendreich.

Q. And what is your occupation?

A. At the present time, Auditor for the Ter-



(Testimony of C. J. Ehrendreich.)

ritory of Alaska. Prior to this, certified public accountant.

Q. And have you ever been employed by or retained by Admiralty Alaska Gold Mining Company? A. Yes.

Q. During what period of time?

A. From about 1953 through about February or January of 1955.

Q. And during that period of time what was your occupation with them?

A. Secretary-treasurer.

Q. And did you handle the books for the corporation? A. The books of account; yes.

Q. And what—did you receive a salary?

A. Yes.

Q. What was the salary?

A. Seventy-five dollars.

Q. Why did you terminate your [82] employment?

A. For several reasons; first, disagreement with Mr. Pekovich; next of all, the seventy-five dollars I was receiving didn't begin to even cover the clerical time, let alone anything for myself for acting as secretary-treasurer.

Q. Was there quite a volume of work that had to be performed?

A. A considerable volume.

Q. Who was the one who employed you on behalf of Admiralty Alaska?

A. Oh, I would say it was a combination of Mr. Pekovich and Mr. Roden.

(Testimony of C. J. Ehrendreich.)

Q. And whom did you work with in conjunction with your work there?

A. Primarily with Mr. Pekovich.

Q. Now, did you know Robert Coughlin, who is now deceased and whose executrix is bringing this case?

A. Very well.

Q. Did you know that he succeeded you as secretary-treasurer in taking care of the accounts of the corporation?

A. Yes.

Q. Did you ever have any conversations with Mr. Coughlin pertaining to his agreement to take over that work?

A. Very many conferences during the early part of '55.

Q. And what did Mr. Coughlin tell you in regard to that, as to what his agreement was? [83]

Mr. McLean: Objection, your Honor; calling for hearsay evidence.

Mr. Boochever: Well, your Honor, that is covered specifically in our statute, on the deadman's statute. It is Section 58-6-1, A.C.L.A. 1949, in which it states: "When a party to a civil action or suit by or against"—I will wait until your Honor gets it there. "When a party to a civil action"—

The Court: Did you say -6-?

Mr. Boochever: -6-1, your Honor.

The Court: 58-6-1?

Mr. Boochever: That is right, sir.

The Court: O. K.

Mr. Boochever: Oh, wait a second, your Honor. I have the wrong citation. I am sorry. Yes; that is

(Testimony of C. J. Ehrendreich.)

right. It is the right citation, only I am starting—starting at the middle of the paragraph, the sentence at the bottom: “When a party to a civil action or suit by or against an executor or administrator appears as a witness in his own behalf, statements of the deceased whether oral or in writing concerning the same subject may also be shown.”

The Court: I think that settles it.

Mr. McLean: I didn’t think this was within the scope of that definition, your Honor. I looked it over. I don’t have it before me but—— [84]

The Court: It says, just as he read it, the whole statute says—“Matters affecting credibility” is the title, and it says “Statements of deceased person.” Let’s read it all and see. Maybe you are right.

“Neither parties nor other persons who have an interest in the event of an action or proceeding are excluded as witnesses; nor those who have been convicted of crime; nor persons on account of their opinions on matters of religious belief; although in every case, except the latter, the credibility of the witness may be drawn in question, according to the rules of the common law. When a party to a civil action or suit by or against an executor,” and this is by an executor, “or administrator appears as a witness in his own behalf,” and Mr. Pekovich is a party and has appeared as a witness in his own behalf, “statements of the deceased whether oral or in writing concerning the same subject may also be shown.”

(Testimony of C. J. Ehrendreich.)

So, I believe that——

Mr. McLean: Isn't that, your Honor, for the executor or executrix, as the case may be?

The Court: It says for or against. "When a party to a civil action or suit"——

Mr. McLean: The witnesses themselves—in this case we have an altogether disinterested person who is not a party to the action at all. [85]

The Court: But it says: "When a party to a civil action or suit by or against an executor or administrator appears as a witness in his own behalf, statements of the deceased whether oral or in writing concerning the same subject may also be shown." And I imagine the purpose of it is to show by statements of the deceased that the facts were different than were testified to by the party in his own behalf.

Mr. McLean: Well, your Honor, before we finish with it, I only wish to point out, when there are statutes such as this, that the common law, generally discussed in American Jurisprudence and a number of other encyclopedias, interpret that to be one of the exceptions to the hearsay rule but confine it to statements which are against the decedent's interest, or, in this case, the plaintiff's interest.

Just a minute and I will read you what American Jurisprudence has to say on the subject. I will quote from American Jurisprudence, Volume 20, Section 608 of Evidence, concerning "Deceased Persons' Declarations." 608 begins: "Generally—In the absence of statute, the death of a declarant is not in



(Testimony of C. J. Ehrendreich.)

itself a ground for invoking an exception to the hearsay rule which renders unsworn statements inadmissible in evidence." I will go over this rather hastily until I come to the meat of it, your Honor. "Under certain circumstances, however, statements made by a person since deceased are admissible under an exception to such rule, based on the ground of [86] necessity. It has been asserted that while declarations of deceased persons are always to be received with caution, the conventional objection that evidence consisting of the alleged declarations of deceased persons is so easily fabricated that it is open to suspicion concerns the weight, rather than the competency, of such proof."

Now, I will skip over a couple of sentences to save time, your Honor, because the important one is the last paragraph here.

"If a declarant is dead, the general rule is that statements made by him against his pecuniary or proprietary interest are admissible even as between third parties. Within limitations, the declarations of persons since deceased are competent upon questions of boundaries. Moreover, statements of a deceased person have been held admissible upon the question of his citizenship. As hertofore stated, the declarations of deceased persons are received under certain limitations and restrictions in proof of matters of family history, relationship, and pedigree. Again, the declarations of a testator or an insured are admissible for certain purposes following his decease. There is a conflict of authority in reference to the

(Testimony of C. J. Ehrendreich.)

admissibility of declarations of deceased attesting witnesses concerning the mental capacity," and the subject continues on to one in which statutes are applicable, which runs right to the particular statute that we have on our [87] books and the interpretation of it.

"A question concerning the actions or proceedings in which a statute providing for the admission in evidence of the statements of a person since deceased depends to a great extent for its solution upon the terms of the statute, which, as previously stated, is usually accorded a liberal construction. There is authority for the proposition that the particular form in which a proceeding is brought is immaterial in this connection. Such a statute has been held applicable to a disbarment proceeding and a proceeding under a Workmen's Compensation Act."

And I want to read—the conditions under which this kind of evidence would be admissible is based upon the statute with this interpretation: "Good Faith of Declarant—Good faith being one of the conditions under which the declarations of a deceased person are admissible under a statute, a declaration is not competent unless found by the court to have been made in good faith. A court is justified in finding that a declaration was made in good faith where it appears to have been made in writing in response to a letter enclosing a questionnaire," and so forth.

And I contend, your Honor, that, any interpreta-

(Testimony of C. J. Ehrendreich.)

tion given to this particular statute, it should be based upon the testimony to the parties, or in this case the executrix, and the other party, the individual who wrote the letter and had [88] the dealing with Mr. Coughlin, not upon third parties or strangers who may want to come in and give their interpretation based upon hearsay of what may have transpired.

While I haven't come prepared to dispute the statute or try to write in an interpretation of it, I think that it does exclude such hearsay testimony as to what this decedent told someone else, because we could bring in witnesses for the next three days.

The Court: I realize that. I realize what you are trying to bring up in this argument, and the Court is very cognizant of the danger of such a rule of law. A man could make a very self-serving declaration or statement during his lifetime and then die, and that could be testified to and, if accepted as a positive fact, might result in great injustice being done. However, the statute permits that kind of testimony. The weight of that is certainly for the Court, or the jury, as the case may be, and, in view of your statute, I don't see any cases there which have any bearing on this particular matter, and I will overrule your objection and accept the testimony.

Q. (By Mr. Boochever): Mr. Ehrendreich, I believe the question was whether you had any conversations with Mr. Coughlin pertaining to this con-



(Testimony of C. J. Ehrendreich.)

tract of employment. Would you state what Mr. Coughlin told you in that regard?

A. It wasn't just one single conversation. It was a series [89] of conversations over a period of time while Mr. Coughlin was getting familiar with the books. I recall one particular instance where I was helping prepare the payroll tax return and we were discussing Form 941 and so on.

The Court: Do you remember the time and the date and the place?

A. This was right around the end of January, because the report was due the 31st of January.

The Court: What year?

A. 1955.

The Court: 1955.

Q. (By Mr. Boochever): And what transpired on that; what was said by Mr. Coughlin on that occasion?

The Court: Let's see—who was present?

Q. (By Mr. Boochever): Who was present?

A. I was there. Mrs. Ehrendreich was right outside of my office door, and Mr. Coughlin was in at my desk, and her desk was right outside of my office door, and so the three of us were there, or in effect there, because she could hear what was going on.

Q. And what was said at that time?

A. He had been aware—I might go back to bring out what he had said—he had been aware for some time of the volume of work that I was doing, and the time he brought these [90] payroll reports in



(Testimony of C. J. Ehrendreich.)

we discussed pretty generally the work, and he said, "I can see now why you kept saying that seventy-five dollars wasn't enough," and I said, "Well, Bob, my understanding is that you settled for the same thing." He said, "Well, I have got some stock." He didn't mention the amount, but he said, "Well, I have got some stock."

Q. In other words, he told you that he had some stock over and above the seventy-five dollars——

The Court: Now, wait a minute.

Mr. McLean: I object to the leading question and——

The Court: That is highly improper, Mr. Boochever.

Mr. Boochever: I was trying to rephrase, your Honor, what he said. I beg your pardon.

The Court: He said he didn't say how much stock he had or anything. He just said, "I have got some stock," and I think——

Mr. Boochever: Well, I wasn't attempting to change that at all, your Honor. I was merely rephrasing what he said in preparation for the next question. I am sorry, your Honor, that your Honor feels that way.

The Court: I think it was leading, very highly leading.

Mr. Boochever: Very well, your Honor.

Q. (By Mr. Boochever): Did you have other conversations [91] with him about that matter, Mr. Ehrendreich? A. About the stock situation?

Q. About his compensation?

(Testimony of C. J. Ehrendreich.)

A. Well, just casual conversation. I couldn't point to any specific one, but I do know that we talked it over a number of times even after that.

Q. And did he ever tell you how much stock he was to receive?      A. No.

Q. He never told you specifically how much?

A. No.

Q. Did he tell you that he was to get stock at that time, or do you remember what his words were in that regard?

A. Well, at the time he mentioned, he said, "I have got stock," I knew that he had stock in the company prior to that, because he had to have at least qualifying shares, so I interpreted it to mean additional stock, and we also discussed from this angle—he said, "Well, if I get this stock," that is the way he put it, "what will be the effect on my personal taxes?"

Q. And he asked you that question; is that right?      A. He asked me that question.

Q. Do you know what the amount of work was that he had to do in connection with the Admiralty Alaska Gold Mining Company?

A. Pretty generally; yes. [92]

Q. What did it consist of?

A. There was a finishing up, or we were just about at the finishing up point on the D.M.E.A. contracts. I had recently completed the protest on the audit that the D.M.E.A. auditor had made. This was several months before. So, we had that point cleared up. Then, as I recall it, there was still a

(Testimony of C. J. Ehrendreich.)

little bit of subcontract work that had to be done, some D.M.E.A. reports to be filed, and payroll taxes, and just about that time, or just prior to that time, some of the stock records, that is, the capital stock records, had come back from the transfer agent in New York, and on top of that there were some of these eight per cent, or six or eight per cent, stockholder notes on the books that they were trying to clear up.

Q. And did that involve a fairly substantial amount of work?

A. A considerable amount of pencil work; yes.

Q. Did you yourself have any knowledge of how much time Mr. Coughlin was putting in on the work?

Mr. McLean: I object. It calls for a conclusion.

The Court: No, it doesn't. I overrule the objection. He asked if he himself of his own knowledge had any idea.

A. Yes, I do have a pretty good idea. That was about the beginning of my tax season, so I put in a considerable [93] amount of evening work, and I know that Mr. Coughlin was there, oh, two or three evenings a week at least in addition to being in and out a number of times during the day.

Q. Was your office adjoining the office of Admiralty Alaska Gold Mining Company?

A. Right next door.

Mr. Boochever: That is all.

(Testimony of C. J. Ehrendreich.)

### Cross-Examination

By Mr. McLean:

Q. Mr. Ehrendreich, did I understand you to say that, when you were the secretary-treasurer, did you furnish the clerical and the office space in addition to your services? A. Yes.

Q. All for seventy-five dollars a month?

A. That is right.

Q. And this meeting you spoke of wherein you, and Mrs. Ehrendreich was outside your office door, that was a conversation after you turned the books over to him and so forth? A. That is right.

Mr. McLean: No further cross. [94]

### Redirect Examination

By Mr. Boochever:

Q. Mr. Ehrendreich, do you know if Mrs. Ehrendreich heard that conversation?

A. I don't know, and I have never mentioned or she has never mentioned anything to me. She may have, because she was well aware of some of the affairs of Admiralty Alaska. In fact, she used to post the cash books.

Q. Well, you had never before, you had never told me about Mrs. Ehrendreich being present at that conversation, had you? A. No.

Mr. Boochever: Now, your Honor, I was hoping we would get through with this today, and I don't intend to call Mrs. Ehrendreich, but if counsel feels



(Testimony of C. J. Ehrendreich.)

it is important, I will ask for time to do it and have her in tomorrow, because I don't feel it is probably material and I don't know whether she remembers the conversation or not, but I don't want to be in a position of not producing all available witnesses, so I will abide by your Honor's decision on that. If it is desirable, I will subpoena her.

The Court: I have no opinion on the subject at all.

Mr. McLean: I don't intend to press it any more as far as Mrs. Ehrendreich is concerned.

Mr. Boochever: All right. Then I will not subpoena [95] Mrs. Ehrendreich, but I want it understood I am not doing——

The Court: Well, in view of the fact that you do not have the rule, equally within the knowledge of the deceased, in Alaska, it isn't so important.

Mr. Boochever: Very well, your Honor.

Mr. McLean: I don't intend to argue, counsel, that, if she were here, she would state differently.

The Court: The Court has to admit that in every lawsuit I learn some new law, because you have by statute changed a lot of our common law rules in other jurisdictions.

Mr. Boochever: I have no further questions to ask Mr. Ehrendreich.

Mr. McLean: No further cross.

The Court: You may step down.

(Witness excused.)

## WAUNALEE TURNMIRE

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

## Direct Examination

By Mr. Boochever:

Q. What is your name, please?

A. Waunalee Turnmire.

Q. Are you related to Mrs. Coughlin, the plaintiff in this suit? [96]

A. Yes. I am her daughter.

Q. When did you come to Juneau in 1955?

A. July 1st.

Q. And did you live with Mr. and Mrs. Coughlin for a while after that?      A. Yes, I did.

Q. Did you ever hear Mr. Coughlin discuss any arrangement he had with Admiralty Alaska Gold Mining Company pertaining to remuneration?

Mr. McLean: The same objection, your Honor, on the grounds that this discussion—she is not a party, and there is no groundwork been laid as to what the circumstances of the discussion were. It certainly wasn't in connection with business, since she is a part of the family, and I think it has no materiality.

The Court: The Court may be wrong, but I interpret this statute to mean, to state, to mean what it says. It says, "Statements of the deceased whether oral or in writing concerning the same subject may also be shown." Now, oral statements may be shown, I guess, so we will take the testimony.

(Testimony of Waunalee Turnmire.)

Q. (By Mr. Boochever): What was said in that regard, Mrs. Turnmire?

A. Well, I don't remember anything specifically but one incident.

Q. Who was present at that? [97]

A. Mr. Coughlin and my mother and myself.

Q. And where did this conversation take place?

A. In their home.

Q. And approximately what month and what year was that?

A. Well, it was still in the summer.

Q. What year? A. Of 1955.

Q. And what was said at that time to the best of your recollection?

A. Well, Bob was going to the office and——

Q. By "Bob" do you mean Mr. Coughlin?

A. Mr. Coughlin; yes. And my mother said, as nearly as I can remember, "Pop, you better get those shares from Sam," and I remember that Bob said, "Oh, he will give them to me."

Q. And was there anything further said at that time? A. Not at that time; no.

Q. And did you hear any other conversation pertaining to this matter?

A. Not that I can remember specifically, but I do remember that.

Mr. Boochever: No further questions.

Mr. McLean: No cross.

The Court: You may step down.

(Witness excused.) [98]

Mr. Boochever: I will call Mrs. Coughlin.

Mr. McLean: Your Honor, before the interrogation begins, I only wish to state that I think a good deal of this rebuttal testimony isn't properly rebuttal testimony in evidence. I think we have gone a little far afield from what is considered proper rebuttal.

The Court: He couldn't have put this testimony in until after the defendant had testified. You see, that is what the statute says.

Mr. McLean: Yes, your Honor. I can get that as a point, your Honor, but I think we are missing now what is the principal part of the case and going into rebuttal evidence that isn't proper rebuttal.

Mr. Boochever: Well, your Honor, I can't see anything more proper rebuttal and in answer to Mr. Pekovich's interpretation of this agreement than what is being presented.

### MINNIE COUGHLIN

called as a witness on her own behalf, having previously been duly sworn, testified as follows:

#### Direct Examination

By Mr. Boochever:

Q. Mrs. Coughlin, have you ever discussed with your husband, Mr. Coughlin, the work he did for Admiralty Alaska Gold Mining Company?

A. Many times. [99]

Q. And what did he say pertaining to that?

A. Well, I complained about the time he was



(Testimony of Minnie Coughlin.)

putting in down there for this seventy-five dollars a month, and he kept reminding me that he had these shares coming.

Q. Did he say how many shares he had coming?

A. Four thousand.

Q. Did he ever show you the agreement that he had?

A. Yes, he did. And may I go on and explain, your Honor?

The Court: It depends. You see, the danger of that is that certain testimony is not admissible and a witness may get into the realm of inadmissibility, and so it is best to answer your lawyer's questions.

Q. (By Mr. Boochever): Can you describe how he happened to show you the agreement?

A. Well, he brought it home and told me to please take good care of it, this note promising the shares, that that was all the evidence he had that they were forthcoming, and he said, "If anything happens to me, don't lose this," and that was repeated many times, and we put it in the writing desk in the living room in a particular drawer, and it was to be there.

Q. Now, did you have discussions on this just on one occasion or on a number of different occasions?

A. Many occasions.

Q. Do you of your own knowledge know how long and how much [100] hours Mr. Coughlin put in for Admiralty Alaska Gold Mining Company?

A. I have tried to remember. He was there all

(Testimony of Minnie Coughlin.)

of the time almost that he was not out on the Forester.

Q. Is that Forester a boat in which Mr. Coughlin had an interest?

A. Yes; that is the boat in which he had a half interest. They make a weekly mail run which usually takes about three days. The remainder of the time Mr. Coughlin was to be found, every time I wanted to get him, in the Admiralty Alaska office.

Q. Did you ever work there with Mr. Coughlin?

A. I did during one spring, the spring of 1955. I spent nine days there helping without remuneration to set up files and get some order in a place where no clerical work had been done. I set up files for the company, made labels for all of the folders. We bought necessary folders. Mr. Pekovich endorsed purchasing them from Burford's. And I tried to make, as nearly as I could, a logical filing system.

Q. During those nine days was your husband working there? A. Yes.

Q. All the time?

A. Yes. I didn't go down when he wasn't there.

Q. Now, during the winter months did your husband go out on [101] the boat, the Forester?

A. No; he didn't.

Q. Do you know what he did, about how much time he was putting in in the Admiralty Alaska Gold Mining Company office?

A. He put in much more than the three or four days a week that he did when he went out on the

(Testimony of Minnie Coughlin.)

boat, almost full time. He conducted some business for the Island Transportation Company.

Q. Did he answer—do you know if he answered correspondence for Admiralty Alaska?

A. Yes; he did.

Q. What other work do you know of your own knowledge that he did for them?

A. He prepared reports, and he met emergency conditions for orders, for supplies, for personnel, and for a company from Funter Bay or from—I guess that is where it is—and, in short, was on call. I used to complain that he never got to stay home on Sundays because he always went down there and worked on Sundays.

Q. Now, do you know if—did he ever explain why he had not received the four thousand shares?

A. Yes; he did.

Q. What did he say was the reason?

A. He said that Mr. Pekovich's shares were tied up by the [102] S.E.C.

Q. Do you know if he ever wrote to the S.E.C. about that?

A. I have a letter in my possession that indicates that he did.

Q. Did he ever discuss writing it, writing a letter to the S.E.C.?

A. Yes; he did. I helped him write it, or helped him phrase it.

Q. Did you see the letter itself?

A. Yes; I did.

Q. Do you have a copy of that letter?

(Testimony of Minnie Coughlin.)

A. No; I don't. It must be in the files of the Admiralty Alaska Company.

Q. What did that letter state?

A. It explained, after a good deal of discussion—he was going to say that he had five thousand shares, and I said, “Well, Bob, you don't have five thousand shares. You only have one thousand plus a promise for four thousand,” and he discussed the word “beneficial,” and that was the word that was suggested to him to use, by an attorney, to explain the tentative nature.

Q. Beneficial what?

A. Beneficial—whatever the phrase is in the letter. I have forgotten just how it reads.

Q. Now, do you have any letter from the S.E.C. acknowledging [103] that letter, that is, in your files?

A. Yes, I do.

Q. I will show you what purports to be a letter, dated December 3, 1954, from the Securities and Exchange Commission, and ask if you can identify that?

A. Yes, I can.

Q. What is that?

A. It is a letter from them directed to Bob which arrived at the house, and the envelope in Bob's notation on the back shows that it was received at our house, discussing the matter of this——

Q. Of the letter that Mr. Coughlin wrote?

A. Yes; and naming the date of his letter as November 4, 1954.

Mr. Boochever (Handing document to counsel for



(Testimony of Minnie Coughlin.)

defendants): I request that this be introduced into evidence as Plaintiff's Exhibit No.—

The Clerk: 4.

Mr. McLean: Your Honor, I think the letter serves no purpose, and we will object to it accordingly, since it is not material to the case at all. There is some reference to five thousand shares in a beneficial interest, but it obviously runs to a discussion of what Mr. Coughlin was doing at the time, and being from the Securities and Exchange Commission there is an inference there that they are interrogating him [104] on what activities the Admiralty Alaska Gold Mining Company was doing, and not to the ownership of any shares of stock. The Court can best judge it by looking at the letter.

The Court: Well, may I see the letter?

(Whereupon, the letter was handed to the Court by the Clerk of the Court.)

Mr. Boochever: Your Honor, my reason for requesting its introduction is proof of a statement from the deceased pertaining to this matter, in accordance with the statute.

The Court: It may be received for that purpose.

The Clerk: It is marked Plaintiff's Exhibit 4.

(Testimony of Minnie Coughlin.)

PLAINTIFF'S EXHIBIT No. 4

United States  
Securities and Exchange Commission  
Regional Office  
42 Broadway  
New York 4, N. Y.

In Replying Please Quote

JJP:ee

NY—2859

December 3, 1954.

Mr. Robert E. Coughlin,  
Box 529,  
Juneau, Alaska.

Re: Admiralty Alaska Gold Mining Co.

Dear Sir:

This is in reply to your letter of November 22, 1954, in which you ask to be informed of the regulations covering our request for certain information re holdings of officers, directors and principal stockholders of the above-named company.

The Securities Act of 1933 passed by Congress for the purpose of providing full and fair disclosure of the character of securities sold in interstate and foreign commerce and to prevent frauds in the sale thereof, authorizes this Commission to investigate sale and distribution of securities. For further details I call your attention to Section 20(a) of this

(Testimony of Minnie Coughlin.)

Act. If a copy of the Act is not available to you, you may obtain a copy by writing to the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C. The price for a copy is fifteen cents.

I note that you state in your letter that prior to 1952 you owned no stock in this company but since that time you acquired a beneficial interest in 5,000 shares. Please advise me of the exact date you acquired this interest, and from whom you acquired these shares and what price you paid for them and to whom payment was made. In addition please give me the details of your election or appointment as Vice-President, Secretary and Treasurer of this company.

Your prompt co-operation in this matter will be appreciated.

Very truly yours,

/s/ FRANCIS J. PURCELL,  
Regional Administrator.

Received in evidence April 2, 1957.

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Q. (By Mr. Boochever): Mrs. Coughlin, that letter refers to—"I note that you state in your letter that prior to 1952 you owned no stock in this company but since that time you acquired a beneficial interest in 5,000 shares." Now, with reference to the one thousand shares which you listed on your

(Testimony of Minnie Coughlin.)

Inventory and Appraisement, do you have the certificate for that?      A. Yes; I do.

Q. Has it been transferred on the company's books?

A. No; it hasn't. It still shows issued to Mr. Pekovich, and he has signed it over to Mr. Coughlin on the back, so it never has gone through the books.

Q. And is that why it was referred to—do you know if that [105] is why it was referred to as a beneficial interest and not the actual shares?

A. Yes; yes.

Q. Now, do you know if Mr. Coughlin ever received the four thousand shares that were referred to there?

A. I haven't been with him every minute, but I know that he would have told me. I feel certain that he would have told me, because it came up frequently, and the last conversation was not very long before he died.

Q. What was the nature of that?

The Court: Well, I think it is admitted that they didn't.

Mr. Boochever: Very well, your Honor.

Q. (By Mr. Boochever): In that last conversation, did he give any indication as to whether or not he felt he was entitled to those shares?

A. Yes.

Q. What did he say in that regard?

A. He said he has "them coming. Sam will give them to me. I know he will. I have perfect faith in him," and he reiterated that.



(Testimony of Minnie Coughlin.)

Mr. Boochever: That is all.

The Court: You may cross-examine. [106]

Cross-Examination

By Mr. McLean:

Q. Mrs. Coughlin, do you know from what sources the principal income came to Mr. Coughlin?

A. I know that for two years we had no principal income. We spent money that we had gotten from sale of the Peterson Refuse Company, and that is what we were living on.

Q. And you did not have an income from the Island Transportation Company?

A. Sporadically. And that was—if you wish to call Mr. Gallagher to the stand—well, he has just left now—but that was far from an income-producing place. They did not take a salary during the winter, either of them.

Q. Did not Mr. Coughlin work on the Island Transportation Company affairs in the office?

A. Yes. They took what they could afford to in view of the mortgages that were held against the boat, which were considerable.

Mr. McLean: No further cross.

Mr. Boochever: No further questions.

The Court: You may step down, Mrs. Coughlin.

(Witness excused.)

Mr. Boochever: The plaintiff rests, your [107]  
Honor.

## Defendants' Surrebuttal

## WASO SIVIN PEKOVICH

called as a witness on behalf of the defendants, having previously been duly sworn, testified as follows:

## Direct Examination

By Mr. McLean:

Q. Mr. Pekovich, there has been introduced in evidence since you were last on the stand a letter from the Securities and Exchange Commission. I hand you this document. Do you recognize it?

A. Yes; I do.

Q. What is it?

A. A draft of a letter that was sent to all the stockholders of the Admiralty Alaska Gold Mining Company.

Q. Is it an exact copy of a letter that was sent to all the stockholders?

A. All I know, and to the best of my belief, it is exact, because Bob wrote this letter and he——

Q. And you say, you know of your own knowledge that this is a letter written by Robert E. Coughlin?

A. Yes; written to all the stockholders, in the form of pamphlets.

Mr. McLean: May it please the Court, I would like to have this marked, and, subject to objection by counsel, introduce it as an exhibit, and, since it is a rather lengthy one—(handing document to counsel for the plaintiff). [108]

(Testimony of Waso Sivin Pekovich.)

Mr. Boochever: I don't feel that this is material at all, but I have no objection to it.

The Court: It may be received.

Q. (By Mr. McLean): Did this letter——

The Court: What is that exhibit number?

The Clerk: That will be marked Exhibit F.

The Court: F?

The Clerk: F.

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## DEFENDANTS' EXHIBIT F

To the Stockholders,  
Admiralty Alaska Gold Mining Co.

Ladies & Gentlemen:

Just recently you have been sent quite a comprehensive report on the work so far done under the Defense Minerals Exploration Administration's financing, and while the work is still going on satisfactorily, we may bring you up to date on that in the annual report after the meeting takes place in February.

Our company is becoming more and more important and all of you are urged to show your active interest in your company by attending the meetings, if at all possible, or at least to return your proxy without fail.

There never was any dissention among the officers and directors, nor the management of your property, but considerable time is consumed to classify

(Testimony of Waso Sivin Pekovich.)

Defendants' Exhibit F—(Continued)

the proxies. That can be avoided if you will check off the name of the proxy you desire.

We are giving you a list of the names of the officers and directors likely to be present at a meeting, also the general manager of our operation, and you should designate one of them as your proxy, or anyone else you wish. The only interest we have is that you vote. Henry Roden, President; Robert E. Coughlin, Vice President; James Gerald Williams, Director; W. S. Pekovich, General Manager, all of Juneau. Norman C. Stines, San Francisco, California, Managing Director, and Arthur F. Erickson, Seattle, Washington, Director, will probably not be present, but they have the right to delegate your proxies if you wish to select them.

It should be of interest to you to know that the New York office of the Securities and Exchange Commission have been looking into what is said to be "broker's transaction" in the stock of the Admiralty Alaska for the first time in the company's more than 35 years history. Such investigation was made in December, 1953. While that is claimed to have been a routine investigation, the market of your stock broke from around 35c to below 15c a share. Representatives of our company demanded an interview with the proper officials of the Securities and Exchange Commission and were told that the investigation was one done as routine and had nothing to do with the Admiralty Alaska as such.



(Testimony of Waso Sivin Pekovich.)

Defendants' Exhibit F—(Continued)

The same sort of investigation has been going on and annoying letters have been sent to some of our stockholders.

Twice we have requested the Securities and Exchange Commission officials to indicate the rules under which they think they have a right to do what they have done, and so far we have had no reply. Since it is claimed to be routine, the investigation should be over soon, and no harm can come from it. We want you to know what is going on and that your company is in no way involved in that investigation. This we consider material facts as defined by the rules and regulations of the Securities and Exchange Commission. So that you will be assured of your company not being concerned with this routine investigation, we can do no better than quote typical statements from letters sent to various stockholders that came to our attention and signed by Mr. Francis J. Purcell, Regional Director, New York Office, Securities and Exchange Commission:

“The fact that this letter is being sent to you should not be regarded as reflecting on the character or reliability of the above-named corporation nor as an expression of opinion on the part of the Commission that any violation of law has been committed.”

If this happened to be not routine and contrary to what was stated, you will be furnished full text of the essential correspondence between the com-

(Testimony of Waso Sivin Pekovich.)

Defendants' Exhibit F—(Continued)

pany and the New York office of the Securities and Exchange concerned.

Some time ago, the Admiralty Alaska filed for permission to sell 600,000 shares of stock and the value declared was 50c. That was for record only and to comply with the rules and regulations of the Securities and Exchange Commission calling for price as it had been on the open market two weeks prior to the filing. You were previously informed our company, practically speaking, sold no stock on the open market at any time. In that respect, the policy of the company has not changed, nor is there any present intention to sell on the open market, but merely to clear it for possible sale in case of future need for funds and delivery of such stock in a large block. We believe that if sold at all, it will be to foreign buyers and at a better price. In comparison to our former finances, our company is in fine shape and in no hurry to get additional funds.

As stated, the company had no stock to offer at the present time for distribution. Any of you wishing to secure priority in the event stock, when and if offered in the future, may designate the number of shares desired, price to be paid, and for how long the order stands good. Should the stock be offered to the public, you will be allotted the amount requested or on a pro rata basis in performance to

(Testimony of Waso Sivin Pekovich.)

Defendants' Exhibit F—(Continued)

any non-stockholder in the same amount and at the same price.

Please Understand This Is Not to Be Wrongly Construed as Solicitation to Sell Because It Definitely Is Not, but Merely the Expression of Your Right to Preference.

Very truly yours,

ADMIRALTY ALASKA GOLD  
MINING CO.,

ROBERT E. COUGHLIN,  
Secretary-Treasurer.

Received in evidence April 2, 1957.

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Q. (By Mr. McLean): Does Exhibit F, this particular letter of Mr. Coughlin's to the stockholders, relate to correspondence that he had with the S.E.C. on a number of business matters?

A. (Nodding.)

Q. Indicate yes or no.                      A. Yes.

Q. Mr. Pekovich, do you know, or did you know, that Mr Coughlin had written such a letter as Plaintiff's Exhibit No. 4?

A. No; not his personal letter, I don't; but that is official letter.

The Court: May I see that last exhibit?

(Whereupon, the exhibit was handed to the Court by the Clerk of the Court.)

(Testimony of Waso Sivin Pekovich.)

Mr. McLean: I have no further questions.

The Court: Do you have anything? [109]

Mr. Boochever: No cross-examination, your Honor.

The Court: You may step down, Mr. Pekovich.

A. Thank you.

(Witness excused.)

Mr. McLean: No further rebuttal. The defendants rest.

The Court: Do both sides rest?

Mr. Boochever: Yes, your Honor.

The Court: Any arguments?

Mr. Boochever: Yes, your Honor; I am ready to argue it.

The Court: Well, I would like to read this (reading to himself).

Mr. Boochever: Very well, your Honor.

The Court: Mr. McLean, what is the particular thing in this letter, Exhibit F, that you——

Mr. McLean: Your Honor, it refers to correspondence that Mr. Coughlin had with the S.E.C., and there is comment contained in that that the correspondence——

The Court: It bears no date, does it?

Mr. McLean: It bears no date; no, your Honor; but Mr. Pekovich identified it as being related to correspondence that Mr. Coughlin had with the S.E.C., and, especially since plaintiff has attempted to show a valuation of the stock along about this period, together with the fact that the [110] evi-



dence the defendant relies upon is that Mr. Coughlin realized the value of the stock would depreciate considerably, that he in turn took cash rather than ask for the stock.

Mr. Boochever: I didn't get that last part. I don't think there is any mention of it in the letter at all.

Mr. McLean: There is nothing in the letter.

The Court: That is a matter of argument, I guess.

Mr. McLean: It is a matter of valuation of the stock.

The Court: He is referring to what happened in December of 1953. It doesn't say what date this letter is. Did you say '55?

Mr. McLean: He said it was related to—there is no date on it, your Honor. I don't know how you can——

The Court: I don't know either. I don't know how you can relate it to anything, except that the only one statement in there is that the investigation of December, 1953, caused the stock to break to below fifteen cents a share, and that may be a matter or ground for argument as to the reason you claim that he took money instead of stock. Very well.

The Clerk: Before proceeding with the argument, the Clerk would like to know if the minutes of the stockholders, February 1, '54, was ever admitted into evidence?

The Court: No. That part was separated out.

Mr. McLean: I inadvertently left it on the [111] Clerk's desk.

The Court: Let's take a five-minute recess.

(Whereupon, Court recessed for five minutes, reconvening as per recess, with all parties present as heretofore; and the trial proceeded as follows.)

The Court: You may proceed.

Mr. McLean: Your Honor, if the evidence supports it, we would like permission to amend the affirmative defense to read, in effect, a counterclaim for any sums of money drawn by Mr. Coughlin over and above any stipulated salary. The evidence does contain some copies of checks for three hundred and fifty dollars, labeled "Advanced by W.K.P.," which, if the Court finds the evidence supports it, we wish to assert as a counterclaim.

The Court: Well, I think—is there any objection?

Mr. Boochever: Well, your Honor, before going to trial on this, I wrote to—Mr. McLean asked that, if he should have to amend his complaint, if I would consent to it in view of his going to trial on such short notice, and, since I agreed to that, I am not in a position to object to his request, though I am sorry that he made it so late.

The Court: Well, there is precedent for—pleadings have been amended after judgment even, so the amendment will be allowed.

Mr. Boochever: In that case, your Honor, I think [112] that the record should show that we

deny that any amount is due to the defendant on the counterclaim.

The Court: Very well.

Mr. McLean: Defendant would waive reporting of the argument.

Mr. Boochever: I am willing to waive reporting of the argument, too.

The Court: Very well.

(Whereupon, the court reporter was excused from the courtroom, but was thereafter recalled, and the following proceedings were had.)

Mr. McLean: May I add, your Honor, my client says that he is reluctant to bring out a great deal of evidence to support anything because of this long-standing friendship, and I think that under those circumstances, your Honor, that it should be either withdrawn altogether, in view of the situation and the facts, as I——

The Court: I think that that is probably the best. If you have any claim there at all, it ought to be asserted in a separate action. Therefore, the counterclaim of defendant, as exhibited by Defendants' Exhibit D, involving four checks drawn to Robert E. Coughlin in the total sum of seven hundred and fifty dollars——

Mr. McLean: My client advises me he wishes to withdraw that exhibit. [113]

The Court: Very well. It may be withdrawn, and the counterclaim to that extent will be stricken. As I started to say, the matter of this whole thing here was handled in a very careless, slipshod manner,

and, of course, that is what makes lawsuits, I guess. Even the thousand-dollar certificate, which was given by Mr. Pekovich to Mr. Coughlin to qualify him so he could be a director and serve as vice-president in the past, has not even been transferred on the books of the corporation. The original certificate is still there, it having been signed and delivered but never actually transferred on the books of the corporation. The four thousand dollars, which is set forth in the contract of employment here, Exhibit No. 2, Plaintiff's Exhibit No. 2, apparently, was not delivered because of the fact that the whole thing was under investigation by the Securities and Exchange Commission, and it seems to me that the burden of proof has been sustained by the plaintiff, and it is pretty well established, as far as inferences, reasonable inferences, can be drawn from the testimony, that this exhibit and this stock was in the nature of a bonus and additional to the seventy-five dollars per month.

There was no protest, when Mr. Coughlin started drawing the seventy-five dollars a month, from the corporation or from Pekovich. The testimony is that there was nothing stated about it at all. The Pekovich agreement here was [114] apparently never ratified by the corporation in any respect. It looks as though he personally was assuming something there. It may not be binding on the corporation and probably isn't. I can't believe that the defendant Pekovich didn't know that Coughlin was drawing the seventy-five dollars per month over a period of over a year and nothing done about the



bonus letter or agreement on the four-thousand-dollar, or four thousand shares of stock. It certainly wasn't very businesslike, and he was the general manager of the corporation and should have been more efficient than that in his own business affairs. Apparently, the stock had gone down after this letter was written to where, according to one letter sent out to stockholders, it had dropped in that year to less than fifteen cents a share, so maybe nobody was particularly interested in the stock; but the agreement was still there.

I am not so concerned about the wording of what Coughlin said to Ehrendreich, whether it was "when" or "if." The fact is he was still thinking about getting the stock.

Therefore, I think that the plaintiff may have a decree as prayed for in the complaint and may present findings of fact and law and the judgment.

Mr. Boochever: I will present those tomorrow, your Honor.

(End of Record.) [115]

United States of America,  
Territory of Alaska—ss.

I, Mildred K. Maynard, Official Court Reporter for the hereinabove-entitled Court, do hereby certify:

That as such Official Court Reporter I reported the above-entitled cause, No. 7605-A of the files of said court;

That I reported said cause in shorthand and myself transcribed said shorthand notes and reduced the same to typewriting;

That the foregoing pages, numbered 1 to 115, both inclusive, contain a full, true and correct transcript of all the testimony and proceedings at the trial of the above-entitled cause, to the best of my ability.

Witness my signature this 10th day of August, 1957.

/s/ MILDRED K. MAYNARD,  
Official Court Reporter.

[Endorsed]: Filed August 12, 1957.

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[Title of District Court and Cause.]

### CLERK'S CERTIFICATE

United States of America,  
Territory of Alaska, First Division—ss.

I, J. W. Leivers, Clerk of the District Court for the District of Alaska, First Division thereof, do hereby certify that the hereto-attached pleadings are the original pleadings and all Orders of the Court filed in the above-entitled cause, and constitutes the record on appeal as designated by the appellants herein to constitute the record on appeal in this case.

In Witness Whereof, I have hereunto set my hand and caused the seal of the above-entitled court

to be affixed at Juneau, Alaska, this 21st day of August, 1957.

[Seal]      /s/ J. W. LEIVERS,  
Clerk of District Court.

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[Endorsed]: No. 15683. United States Court of Appeals for the Ninth Circuit. W. S. Pekovich and Admiralty Alaska Gold Mining Company, a Corporation, Appellants, vs. Minnie Coughlin, as Executrix of the Estate of Robert E. Coughlin, Deceased, Appellee. Transcript of Record. Appeal from the District Court for the Territory of Alaska, Division Number One.

Filed August 23, 1957.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

